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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO

ANNOTATED

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LAWS 1947, CHAPTER 224

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LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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COMMISSIONERS

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EXECUTIVE SECRETARY

TITLES 33-34

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PUBLISHER'S NOTE

Since the publication in 2001 of former Replacement Titles 33 and 34, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, Replacement Titles 33 and 34 are issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of April 1, 2008. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

| | |
|----------|----------------------------------|
| I.R.C.P. | Idaho Rules of Civil Procedure |
| I.R.E. | Idaho Rules of Evidence |
| I.C.R. | Idaho Criminal Rules |
| M.C.R. | Misdemeanor Criminal Rules |
| I.I.R. | Idaho Infraction Rules |
| I.J.R. | Idaho Juvenile Rules |
| I.C.A.R. | Idaho Court Administrative Rules |
| I.A.R. | Idaho Appellate Rules |

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

| Year | Adjournment Date |
|-----------------------|-------------------|
| 1921 | March 5, 1921 |
| 1923 | March 9, 1923 |
| 1925 | March 5, 1925 |
| 1927 | March 3, 1927 |
| 1929 | March 7, 1929 |
| 1931 | March 5, 1931 |
| 1931 (E.S.) | March 13, 1931 |
| 1933 | March 1, 1933 |
| 1933 (E.S.) | June 22, 1933 |
| 1935 | March 8, 1935 |
| 1935 (1st E.S.) | March 20, 1935 |
| 1935 (2nd E.S.) | July 10, 1935 |
| 1935 (3rd E.S.) | July 31, 1936 |
| 1937 | March 6, 1937 |
| 1937 (E.S.) | November 30, 1938 |
| 1939 | March 2, 1939 |
| 1941 | March 8, 1941 |
| 1943 | February 28, 1943 |
| 1944 (1st E.S.) | March 1, 1944 |
| 1944 (2nd E.S.) | March 4, 1944 |
| 1945 | March 9, 1945 |
| 1946 (1st E.S.) | March 7, 1946 |
| 1947 | March 7, 1947 |
| 1949 | March 4, 1949 |
| 1950 (E.S.) | February 25, 1950 |
| 1951 | March 12, 1951 |
| 1952 (E.S.) | January 16, 1952 |

| | |
|-----------------------|------------------|
| 1953 | March 6, 1953 |
| 1955 | March 5, 1955 |
| 1957 | March 16, 1957 |
| 1959 | March 9, 1959 |
| 1961 | March 2, 1961 |
| 1961 (1st E.S.) | August 4, 1961 |
| 1963 | March 19, 1963 |
| 1964 (E.S.) | August 1, 1964 |
| 1965 | March 18, 1965 |
| 1965 (1st E.S.) | March 25, 1965 |
| 1966 (2nd E.S.) | March 5, 1966 |
| 1966 (3rd E.S.) | March 17, 1966 |
| 1967 | March 31, 1967 |
| 1967 (1st E.S.) | June 23, 1967 |
| 1968 (2nd E.S.) | February 9, 1968 |
| 1969 | March 27, 1969 |
| 1970 | March 7, 1970 |
| 1971 | March 19, 1971 |
| 1971 (E.S.) | April 8, 1971 |
| 1972 | March 25, 1972 |
| 1973 | March 13, 1973 |
| 1974 | March 30, 1974 |
| 1975 | March 22, 1975 |
| 1976 | March 19, 1976 |
| 1977 | March 21, 1977 |
| 1978 | March 18, 1978 |
| 1979 | March 26, 1979 |
| 1980 | March 31, 1980 |
| 1981 | March 27, 1981 |
| 1981 (E.S.) | July 21, 1981 |
| 1982 | March 24, 1982 |
| 1983 | April 14, 1983 |
| 1983 (E.S.) | May 11, 1983 |
| 1984 | March 31, 1984 |
| 1985 | March 13, 1985 |
| 1986 | March 28, 1986 |
| 1987 | April 1, 1987 |
| 1988 | March 31, 1988 |
| 1989 | March 29, 1989 |
| 1990 | March 30, 1990 |
| 1991 | March 30, 1991 |
| 1992 | April 3, 1992 |
| 1992 (E.S.) | July 28, 1992 |
| 1993 | March 27, 1993 |
| 1994 | April 1, 1994 |
| 1995 | March 17, 1995 |
| 1996 | March 15, 1996 |
| 1997 | March 19, 1997 |

| | |
|------------------|-----------------|
| 1998 | March 23, 1998 |
| 1999 | March 19, 1999 |
| 2000 | April 5, 2000 |
| 2001 | March 30, 2001 |
| 2002 | March 15, 2002 |
| 2003 | May 3, 2003 |
| 2004 | March 20, 2004 |
| 2005 | April 6, 2005 |
| 2006 | April 11, 2006 |
| 2006 (E.S) | August 25, 2006 |
| 2007 | March 30, 2007 |
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EDUCATION

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STATE BOARD OF EDUCATION

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33-101. Creation of board. — For the general supervision, governance and control of all state educational institutions, to wit: University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, the School for the Deaf and the Blind and any other state educational institution which may hereafter be founded, and for the general supervision, governance and control of the public school systems, including public community colleges, a state board of education is created. The said board shall be known as the state board of education and board of regents of the University of Idaho.

For the purposes of section 20, article IV, of the constitution of the state of Idaho, the state board of education and all of its offices, agencies, divisions and departments shall be an executive department of state government.

Where the term "state board" shall hereafter appear, it shall mean the state board of education and board of regents of the University of Idaho.

[1963, ch. 13, § 1, p. 27; am. 1974, ch. 10, § 1, p. 49; am. 1993, ch. 404, § 1, p. 1470; am. 1999, ch. 56, § 1, p. 143.]

STATUTORY NOTES

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JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Immunity from suit.

Constitutionality.

Const., Art. IX, § 2 requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho. House Bill 345 (1993, ch. 404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802) and which created three boards of education was unconstitutional. *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993).

Immunity from Suit.

The state board of education is immune from suit in federal court pursuant to the Eleventh Amendment of the United States Constitution. *Milbouer v. Keppler*, 644 F. Supp. 201 (D. Idaho 1986).

OPINIONS OF ATTORNEY GENERAL

The historical enactment of this section, as well as its plain language, requires that the educational affairs of the state be governed by a single board of education; therefore, an interpretation of S.L. 1993, ch. 404, section 3 providing for three autonomous governing boards of education to supervise the education affairs of the state was unconstitutional. OAG 93-6.

In implementing the 1993 amendment of this section by House Bill 345, chapter 404, to comply with the constitutional requirements of Const., Art. IX, § 2, the board of education may create guidelines dividing the board into

two advisory councils, one for higher education and the other for publication; the general supervision and control of education must be retained by the board and the duties of the councils should be structured by the board with this requirement in mind; each council can provide oversight in its particular areas of specialization and can be fact finders for the board and can provide their findings along with recommendations to the board; however the board must retain the power to make final determinations governing state educational institutions and the public school systems in the state. OAG 93-6.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Corporate entity.
 Successor of former board of regents.
 Suits by and against.

Corporate Entity.

Board of regents was a constitutional corporation with granted powers and, while functioning within the scope of its authority, was not subject to the control or supervision of any other branch, board, or department of the state government, but was a separate entity, and could sue and be sued, with power to contract and discharge indebtedness, with right to exercise its discretion within the powers granted, without authority to contract indebtedness against the state, and in no sense was a claim against the regents one against the state. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

Successor of Former Board of Regents.

The state board of education, as successor to the former board of regents of the univer-

sity, had the power and authority to defend an action previously instituted against the latter for a pre-existing obligation. *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

The state board of education and board of regents of the University of Idaho was the constitutional and statutory successor of the original regents of the University of Idaho. *State ex rel. Miller v. State Board of Educ.*, 56 Idaho 210, 52 P.2d 141 (1935).

Suits By and Against.

The state board of education as a board of trustees could sue and be sued. *Bobcock v. State Bd. of Educ.*, 55 Idaho 18, 37 P.2d 232 (1934).

33-102. Membership — Appointment — Term of office — Qualifications — Place of office. — The state board of education shall consist of the state superintendent of public instruction, who shall be an ex officio voting member and who shall serve as executive secretary of the board for all elementary and secondary school matters, and seven (7) members appointed by the governor, each for a term of five (5) years. Annually on the first day of March the governor shall appoint members to fill the board positions for which the terms of office have expired. The governor shall, by appointment, fill any vacancy on the board, such appointment to be for the unexpired term of the retiring member. Appointment to the board shall be made solely upon consideration of the ability of such appointees efficiently to serve the interests of the people, and education, without reference to locality, occupation, party affiliation or religion. Any person appointed to said board shall have been a resident of the state for not less than three (3) years prior to the date of appointment; and shall qualify and assume the duties in accordance with laws governing similar appointments to, and qualifications for, office on other state boards. All appointments of members to the state board of education made after the effective date of this act must be confirmed by the senate.

Members of the state board of education holding office on the effective date of this act shall continue in office for the balance of the term to which they were appointed.

The state board shall have and maintain its office in Ada county. [1963, ch. 13, § 2, p. 27; am. 1965, ch. 253, § 1, p. 637; am. 1972, ch. 85, § 1, p. 172; am. 1974, ch. 10, § 2, p. 49; am. 1993, ch. 404, § 2, p. 1470; am. 1999, ch. 56, § 2, p. 143; am. 2001, ch. 183, § 8, p. 613.]

STATUTORY NOTES

Cross References. — Superintendent of public instruction, § 67-1501 et seq.

Superintendent of public instruction as ex-

ecutive officer of state board of education, § 67-1504.

JUDICIAL DECISIONS

Constitutionality.

Const., Art. IX, § 2 requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho. House Bill 345 (1993, ch.

404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802) and which created three boards of education was unconstitutional. *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993).

33-102A. Office of the state board — Executive officer — Appointment — Compensation — Duties and powers. — There is hereby created as an executive agency of the state board of education the office of the state board of education. The state board of education is hereby authorized to appoint an executive officer of the state board who shall serve at the pleasure of the state board and shall receive such salary as fixed by the state board. No employee or contractor of the executive officer of the state board of education or the office of the state board of education shall serve as a tenured faculty member of or have a contract with a state college or university. The executive secretary may be appointed as the executive officer. The executive officer shall, under the direction of the state board, have such duties and powers as prescribed by the said board of regents and the state board of education, not otherwise assigned by law. As used in this section, a “contractor” shall mean a person who has signed or agreed to a contract with the state board of education or the executive officer of the state board of education for a period longer than six (6) months in duration. [I.C., § 102A, as added by 1965, ch. 253, § 2, p. 637; am. 1972, ch. 85, § 2, p. 172; am. 1974, ch. 10, § 3, p. 49; am. 1993, ch. 404, § 3, p. 1470; am. 1996, ch. 217, § 1, p. 717.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1972, ch. 85 provided the act should take effect on and after July 1, 1972.

JUDICIAL DECISIONS

Constitutionality.

Const., Art. IX, § 2 requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho. House Bill 345 (1993, ch.

404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802) and which created three boards of education was unconstitutional. *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993).

33-102B. Superintendent of Public Instruction — Appointment — Compensation — Duties and Powers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I. C., § 33-102B, as added by 1967, ch. 273, § 1, p. 769, was repealed by S.L. 1969, ch. 7, § 1.

33-103. Removal of members — Cause. — The governor is empowered to remove from membership on the state board any member who has been proved guilty of gross immorality, malfeasance in office or incompetency, and shall fill the vacancy thus created by appointment as hereinbefore provided. [1963, ch. 13, § 3, p. 27.]

33-104. Meetings of the board — Honorarium — Expenses — Organization. — The state board shall hold no less than four (4) regular meetings annually at such time and place as may be directed by the board. Special meetings may be called by the president at any time and place designated in such call.

Each member shall be compensated as provided by section 59-509(h), Idaho Code.

At its first meeting after the first day of April, in each year, the state board shall organize and shall elect from its membership a president, a vice president and a secretary. [1963, ch. 13, § 4, p. 27; am. 1971, ch. 50, § 1, p. 122; am. 1976, ch. 354, § 1, p. 1169; am. 1980, ch. 247, § 25, p. 582; am. 1981, ch. 21, § 1, p. 35.]

STATUTORY NOTES

Cross References. — Idaho State University trustees, meetings, § 33-3004.

Lewis-Clark State College, meetings of trustees, § 33-3103.

Meetings when acting as state board for professional-technical education, § 33-2204;

as board of regents for University of Idaho, § 33-2805.

Standard Travel Pay and Allowance Act of 1949, §§ 67-2007, 67-2008.

State School for Deaf and Blind, meetings of trustees, § 33-3403.

33-105. Rules — Executive department. — (1) The state board shall have power to make rules for its own government and the government of its executive departments and offices; and, upon recommendations of its executive officers, to appoint to said departments and offices such specialists, clerks and other employees as the execution of duties may require, to fix their salaries and assign their duties.

(2) Statements of the state board of education and board of regents of the university of Idaho which relate to the curriculum of public educational institutions, to students attending or applicants to such institutions, or to the use and maintenance of land, equipment and buildings controlled by the respective institutions, are not rules and are not statements of general applicability for the purposes of chapter 52, title 67, Idaho Code.

(3) Notwithstanding any other provision of chapter 52, title 67, Idaho Code, the state board of education and board of regents of the university of

Idaho shall be deemed to be in full compliance with the notice requirements of section 67-5221, Idaho Code, if:

- (a) Notice is given by including the intended action in the official written agenda for a regularly scheduled meeting of the board, and the agenda is available for public inspection at the central office of the board not less than five (5) days prior to the meeting; and
- (b) Notice of the intended action, accompanied by the full text of the rule under consideration prepared so as to indicate words added or deleted from the presently effective text, if any, is transmitted to the director of the legislative services office at the same time that notice is given under paragraph (a) of this subsection. The director of the legislative services office shall refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code, to afford the subcommittee opportunity to submit data, views or arguments in writing to the board prior to the time for receiving comment as provided in paragraph (d) of this subsection; and
- (c) The intended action is discussed but not acted upon during the regularly scheduled meeting for which the agenda was prepared, but instead is held for final action at the next regularly scheduled or later meeting of the board; and
- (d) At least fifteen (15) days prior to the scheduled date for final action, the board shall mail to all persons who have made timely request in writing to the board and shall publish in an issue of the Idaho administrative bulletin a brief description of the intended action, or a concise summary of any statement of economic impact required pursuant to section 67-5223(2), Idaho Code, and shall note the time when, the place where, and the manner in which interested persons may present their views thereon; and
- (e) Upon adoption of a rule, the board, if requested in writing to do so by an interested person either prior to adoption or within twenty-eight (28) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. [1963, ch. 13, § 5, p. 27; am. 1974, ch. 10, § 4, p. 49; am. 1992, ch. 263, § 55, p. 783; am. 1999, ch. 21, § 3, p. 29.]

STATUTORY NOTES

Cross References. — Proprietary schools, rules and regulations, § 33-2401, et seq.

Director of legislative services, § 67-427.

Effective Dates. — Section 61 of S.L. 1992, ch. 263 read:

“(1) Subsection (1) of section 60 of this act shall be in full force and effect on and after July 1, 1992, and additionally, the state auditor is authorized to appoint an administrative rules coordinator as soon as practical after July 1, 1992, and to declare such other sections of this act in full force and effect prior to July 1, 1993, as is necessary to effect an

orderly publication of bulletins and the administrative code as soon after July 1, 1993, as possible.

“(2) All other sections of this act shall be in full force and effect on and after July 1, 1993. Any rules and regulations in effect on June 30, 1993, and rules which are promulgated between July 1, 1993, and the publication of the Idaho administrative code, shall be in full force and effect until such administrative rules are published by the coordinator.”

Section 4 of S.L. 1999, ch. 21 declared an emergency. Approved February 19, 1999.

33-106. Budget. — The state board shall prepare a budget of necessary expenditures of its executive department, and shall have control of all moneys appropriated for said purposes. [1963, ch. 13, § 6, p. 27.]

STATUTORY NOTES

Cross References. — Estimates for governor's budget, §§ 67-3501, 67-3502.

33-107. General powers and duties of the state board. — The state board shall have power to:

- (1) Perform all duties prescribed for it by the school laws of the state;
- (2) Acquire, hold and dispose of title, rights and interests in real and personal property;
- (3) Have general supervision, through its executive departments and offices, of all entities of public education supported in whole or in part by state funds;
- (4) Delegate to its executive secretary, to its executive officer, or to such other administrators as the board may appoint, such powers as said officers require to carry out the policies, orders and directives of the board;
- (5) Through its executive departments and offices:
 - (a) Enforce the school laws of the state,
 - (b) Study the educational conditions and needs of the state and recommend to the legislature needed changes in existing laws or additional legislation;
- (6) In addition to the powers conferred by chapter 24, title 33, Idaho Code:
 - (a) Maintain a register of postsecondary educational institutions approved to provide programs and courses that lead to a degree or which provide, offer and sell degrees in accordance with the procedures established in chapter 24, title 33, Idaho Code,
 - (b) Determine whether to accept academic credit at public postsecondary educational institutions in Idaho. Academic credit shall not be transferred into any Idaho public postsecondary institution from a postsecondary educational institution or other entity that is not accredited by an organization recognized by the board,
 - (c) Maintain a register of proprietary schools approved to conduct, provide, offer or sell a course or courses of study in accordance with the procedures established in chapter 24, title 33, Idaho Code;
- (7) Prescribe the courses and programs of study to be offered at the public institutions of higher education, after consultation with the presidents of the affected institutions;
- (8) Approve new courses and programs of study to be offered at community colleges organized pursuant to chapter 21, title 33, Idaho Code, when the courses or programs of study are academic in nature and the credits derived therefrom are intended to be transferable to other state institutions of higher education for credit toward a baccalaureate degree, and when the courses or programs of study have been authorized by the board of trustees of the community college. [1963, ch. 13, § 7, p. 27; am. 1970, ch. 79, § 1, p. 195; am. 1974, ch. 10, § 5, p. 49; am. 1977, ch. 53, § 1, p. 103; 1983, ch. 155,

§ 2, p. 431; am. 1986, ch. 31, § 1, p. 101; am. 1987, ch. 48, § 1, p. 76; am. 1993, ch. 57, § 1, p. 154; am. 1997, ch. 188, § 1, p. 512; am. 1999, ch. 339, § 2, p. 918; am. 2006, ch. 240, § 1, p. 725.]

STATUTORY NOTES

Cross References. — Annexation or excision of territory from district, approved by state board, § 33-308.

Appeals from state board of education on matters affecting school districts, § 33-314.

Boundaries of school districts, correction or alteration by state board, § 33-307.

Boundaries of school districts, records kept by state board, § 33-306.

Consolidation of school districts, approval or disapproval of plan, §§ 33-310, 33-311.

Private courses, rules and regulations, § 33-2401 et seq.

County school fund apportionment, certification of amount to county auditor, §§ 33-1012 and 33-1013.

District audits filed with state board, § 33-701.

Division of school district, approval or disapproval, § 33-312.

Driver training courses, minimum standards, § 33-1702.

Duration, renewal and lapse of teachers' certificates, regulations, § 33-1204.

Examination of books at instance of state board, § 33-121.

Examination of school buildings, § 33-122.

Financial and statistical reports of districts, § 33-701.

Foundation program, apportionment of funds, § 33-1009.

Industrial commission, duty to cooperate with, § 72-517.

Inventory of chattel and personal property owned or leased by the state must be furnished to department of administration, § 67-5746.

Inventory of real property owned or leased in the city of Boise must be furnished to department of public works, § 67-3206.

Lapsed school districts, duties of state board, § 33-309.

New district created by division, appointment of first board of trustees, § 33-505.

Property transferred to another unit of government, §§ 67-2322 — 67-2325.

Proprietary schools and post secondary education institutes, §§ 33-2401 — 33-2409.

Record of teachers' certificates, § 33-1205.

Revocation of teachers' certificates, §§ 33-1208, 33-1209.

School bonds, approval of form, § 33-1107.

School bus drivers, drivers' permit, form, § 33-1509.

School bus drivers, records required, § 33-1509.

School buses, insurance required, § 33-1507.

School buses, maximum occupancy determined, § 33-1508.

School buses, standards of construction, § 33-1511.

School bus inspection, approval of forms used, § 33-1511.

Standards for schools set by state board, § 33-119.

Supervisor of school transportation, appointment, § 33-1511.

Tax levy by county, certification to county commissioners, § 33-1011.

Teachers' certificates, eligibility for, §§ 33-1202, 33-1203.

Transfer of pupils to other districts, §§ 33-1402 — 33-1408.

Transportation of pupils, powers, § 33-1501 et seq.

Trustee zones, approval or disapproval, § 33-313.

Tuition for pupils transferred to other districts, rules and regulations, computation, § 33-1405.

Unmarried mothers, issuance of diploma upon completion of course, § 33-2006.

Unmarried mothers, reimbursement for education, § 33-2007.

Vocational education, powers and duties of state board, § 33-2202.

Amendments. — The 2006 amendment, by ch. 240, rewrote subsections (6)(a)-(c), which formerly read: "(a) maintain a register of courses and programs offered anywhere in the state of Idaho by postsecondary institutions which are: (1) located outside the state of Idaho and are offering courses or programs for academic credit or otherwise; or (2) located within the state of Idaho but not accredited by a regional or national accrediting agency recognized by the board and are offering courses for academic credit. The acceptance of academic or nonacademic credit, at public postsecondary institutions in Idaho, is the prerogative of the state board of education; provided however, credit transferred into Idaho public postsecondary institutions from nonaccredited postsecondary institutions can be accepted only upon positive review and recommendation by the individual postsecondary institutions and with the approval of the state board of education. A nonaccredited postsecondary institution is one which is not accredited by a regional accrediting agency recognized by the state

board or the United States department of education,

“(b) require compliance by institutions which desire to offer courses or programs in Idaho with the standards and procedures established in chapter 24, title 33, Idaho Code, or those standards, procedures and criteria set by the board,

“(c) violation of the provisions of this act will be referred to the attorney general for appropriate action, including, but not limited to, injunctive relief.”

Compiler's Notes. — This section was amended by S.L. 1997, ch. 188, § 1, effective July 1, 1997 and repealed by § 2, effective July 1, 1999; § 3 enacted a new § 33-107 which was to become effective July 1, 1999 as provided by § 5 of S.L. 1997, ch. 188. However, S.L. 1999, ch. 339, § 1, repealed §§ 2, 3, and 5 of S.L. 1997, ch. 188.

Effective Dates. — Section 2 of S.L. 1970, ch. 79 declared an emergency. Approved March 2, 1970.

33-107A. Board may establish an optional retirement program.

— (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of the university of Idaho, Idaho state university, Boise state university, Lewis-Clark state college and the state board of education who are hired on or after July 1, 1993; provided, however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

(a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;

(b) The relation of such rights and benefits to the amount of contributions to be made;

(c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and

(d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are:

(i) Those faculty and nonclassified staff initially appointed or hired between July 1, 1990 and June 30, 1993; and

(ii) Those teaching staff and officers initially appointed or hired on or after July 1, 1993.

All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to remain a member of that retirement system. The election shall be made in writing, within sixty (60) days of the date of initial hire or appointment or the effective date of this act, whichever occurs later. It shall be filed with the administrative officer of the employing institution.

(c) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(4)(a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to nine and thirty-five hundredths percent (9.35%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits or any combination thereof, but in no event less than five percent (5%) of each participant's salary; and

(ii) To the public employee retirement system, an amount equal to one and forty-nine hundredths percent (1.49%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2025, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of the participant's salary. Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(c) Payment of contributions authorized or required under this subsection shall be made by the financial officer of the employing institution to the designated company or companies for the benefits of each participant.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts. [I.C., § 33-107A, as added by 1990, ch. 251, § 1, p. 720; am. 1992, ch. 198, § 1, p. 612; am. 1993, ch. 268, § 1, p. 902; am.

1996, ch. 79, § 6, p. 252; am. 1997, ch. 275, § 1, p. 813; am. 1998, ch. 297, § 1, p. 979; am. 2007, ch. 318, § 1, p. 947.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 318, in subsection (4)(a)(i), substituted “nine and thirty-five hundredths percent (9.35%)” for “seven and eighty-one hundredths percent (7.81%)”; and in subsection

(4)(a)(ii), substituted “one and forty-nine hundredths percent (1.49%)” for “three and three one hundredths percent (3.03%)” and “July 1, 2025” for “July 1, 2015.”

33-107B. Board may establish an optional retirement program for community colleges and postsecondary professional-technical education institutions. — (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of community colleges and postsecondary professional-technical education institutions, including north Idaho college, college of southern Idaho and eastern Idaho technical college, hired on or after July 1, 1997; provided however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

- (a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;
- (b) The relation of such rights and benefits to the amount of contributions to be made;
- (c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and
- (d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

- (a) Eligible employees are the teaching staff and officers initially appointed or hired on or after the effective date of this chapter. All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Eligible employees who are vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to transfer to the optional retirement program. The election shall be made in writing and within sixty (60) days of the date of initial hire or appointment, or one hundred fifty (150) days after the effective date of this chapter, whichever occurs later. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(c) Teaching staff and officers employed by the institution the day before the effective date of this chapter may make a one (1) time irrevocable election to participate in the optional retirement program. The election shall be made in writing and within one hundred fifty (150) days after the effective date of this chapter. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(e) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4)(a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to seven and eighty-one hundredths percent (7.81%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event less than five percent (5%) of each participant's salary; and

(ii) To the public employee retirement system, an amount equal to three and eighty-three hundredths percent (3.83%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2011 and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) For the purposes of section 59-1322, Idaho Code, the term "projected salaries" shall include the sum of the annual salaries of all participants in the optional retirement program established pursuant to this section.

(c) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%). Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho

so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts. [I.C., § 33-107B, as added by 1997, ch. 275, § 2, p. 813; am. 1998, ch. 297, § 2, p. 979; am. 1999, ch. 329, § 29, p. 852.]

33-108. Prepare and publish reports. — The state board shall prepare, or cause to be prepared, and publish such reports, statistical tables and studies as may be a contribution to the general educational welfare of the state. [1963, ch. 13, § 8, p. 27.]

33-109. Annual report. — The state board shall cause to be prepared a report of its actions and expenditures for each year ending on the thirtieth day of June with such recommendations as it shall deem proper for the good of the state educational institutions and public schools of the state. Such report shall be prepared in the form and number, and filed at the time, provided by sections 59-608 and 59-609, Idaho Code. [1963, ch. 13, § 9, p. 27; am. 1976, ch. 9, § 1, p. 25.]

STATUTORY NOTES

Compiler's Notes. — Sections 59-608 and 59-609, referred to in this section, were repealed by S.L. 1978, ch. 17, § 1. The reference should now probably be to § 65-3502.

33-110. Agency to negotiate, and accept, federal assistance. — The state board is designated as the state educational agency which is authorized to negotiate, and contract with, the federal government, and to accept financial or other assistance from the federal government or any agency thereof, under such terms and conditions as may be prescribed by congressional enactment designed to further the cause of education. [1963, ch. 13, § 10, p. 27.]

33-111. Budget for educational institutions. — The state board shall submit to the budget director of the state, at a time set by said director, a budget for each state educational institution under its government and control, showing the financial needs of said institutions for the period for which appropriations are to be made. The board shall direct and control all funds so appropriated. [1963, ch. 13, § 11, p. 27.]

33-112. Plans and specifications — Equipment, appliances and supplies. — The state board shall authorize and approve all plans and specifications for the construction or alteration of buildings at the state educational institutions under its government and control; and shall direct and control the purchase of equipment, fixtures and supplies therefor. [1963, ch. 13, § 12, p. 27.]

33-113. Limits of instruction. — The state board, in the interests of efficiency, shall define the limits of all instruction in the educational institutions supported in whole or in part by the state, and, as far as practicable, prevent wasteful duplication of effort in said institutions. [1963, ch. 13, § 13, p. 27.]

STATUTORY NOTES

Cross References. — Courses of instruction, § 33-1601 et seq.

33-114. Certification — Courses of study — Accreditation. — Supervision and control of the certification of professional education personnel is vested in the state board. The board shall approve the program of education of such personnel in all higher institutions in the state, both public and private, and shall accredit as teacher training institutions those in which such programs have been approved. [1963, ch. 13, § 14, p. 27.]

STATUTORY NOTES

Cross References. — Certification of teachers, § 33-1201 et seq. Lewis-Clark State College, § 33-3101 et seq.

33-115. Teachers' register. — The state board shall keep in its department of education, a register of persons qualified to teach in Idaho, or of any persons otherwise qualified but not having received a teaching certificate, upon the request of such person. Information concerning persons so registered shall be available to any Idaho person seeking to employ teachers. [1963, ch. 13, § 15, p. 27; am. 1974, ch. 10, § 6, p. 49.]

STATUTORY NOTES

Cross References. — Record of teachers' certificates, § 33-1205.

33-116. School districts under board supervision. — All school districts in Idaho, including specially chartered school districts, shall be under the supervision and control of the state board. [1963, ch. 13, § 16, p. 27.]

STATUTORY NOTES

Cross References. — Annexation or excision of territory from district, approval by state board, § 33-308.

Boundaries of school districts, correction or alteration by state board, § 33-307.

Boundaries of school districts, records kept by state board, § 33-306.

Consolidation of school districts, approval or disapproval, §§ 33-310, 33-311.

Division of school district, approval or disapproval, § 33-312.

Lapsed school districts, duties of state board, § 33-309.

New district created by division, appointment of first board of trustees, § 33-505.

Trustee zones, approval or disapproval, § 33-313.

JUDICIAL DECISIONS

Equal Education Opportunity.

The state department of education, state board of education, and superintendent of public instruction are empowered under Const., Art. IX, § 2, this section, § 33-118 and

§ 33-119 and required under federal law to ensure that the needs of students with limited English language proficiency are addressed. *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69 (9th Cir. 1981).

33-117. Public school financial requirements. — The state board shall submit to the budget director the financial requirements for appropriation to the public school income fund, for the foundation program of public school districts. [1963, ch. 13, § 17, p. 27.]

STATUTORY NOTES

Cross References. — Foundation program, § 33-1001 et seq.

commissioners, § 33-1011.

Public school income fund, § 33-903.

Tax levy by county, certification to county

33-118. Courses of study — Curricular materials. — The state board shall prescribe the minimum courses to be taught in all public elementary and secondary schools, and shall cause to be prepared and issued, such syllabi, study guides and other instructional aids as the board shall from time to time deem necessary. The board shall also determine how and under what rules curricular materials shall be adopted for the public schools. The board shall require all publishers of textbooks approved for use to furnish the department of education with electronic format for literary and nonliterary subjects when electronic formats become available for nonliterary subjects, in a standard format approved by the board, from which reproductions can be made for use by the blind. [1963, ch. 13, § 18, p. 27; am. 1994, ch. 333, § 1, p. 1027; am. 1998, ch. 88, § 1, p. 298; am. 1999, ch. 88, § 1, p. 289.]

STATUTORY NOTES

Cross References. — Alcohol, instruction on effects of, § 33-1605.

American flag, instruction in use of, § 33-1602.

Bible selections, choosing by state board, § 33-1604.

Constitution, instruction in, § 33-1602.

Courses of instruction, § 33-1601 et seq.

Driver training courses, minimum standards, § 33-1702.

Health and physical fitness, study guides by state board, § 33-1605.

Instructions to be in English language, § 33-1601.

Narcotics, effect of, § 33-1605.

Sectarian instruction forbidden, § 33-1603.

Tobacco, effect of, § 33-1605.

JUDICIAL DECISIONS

ANALYSIS

Equal education opportunity.
Requirements for school facilities.

Equal Education Opportunity.

The state department of education, state board of education, and superintendent of

public instruction are empowered under Const., Art. IX, § 2, §§ 33-116, 33-119 and this section and required under federal law to

ensure that the needs of students with limited English language proficiency are addressed. *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69 (9th Cir. 1981).

Requirements for School Facilities.

Under Const., Art. 9, § 1, the requirements for school facilities, instructional programs

and textbooks, and transportation systems as contained in regulations presently in effect, and promulgated pursuant to the legislative directive in this section, are consistent with the supreme court of Idaho's view of thoroughness. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

RESEARCH REFERENCES

A.L.R. — Validity of regulation by public school authorities as to clothes or personal appearance of pupils. 14 A.L.R.3d 1201.

33-118A. Curricular materials — Adoption procedures. — All curricular materials adoption committees appointed by the state board of education shall contain at least two (2) persons who are not public educators or school trustees. All meetings of curricular materials adoption committees shall be open to the public. Any member of the public may attend such meetings and file written or make oral objections to any curricular materials under consideration. A complete and cataloged library of all curricular materials adopted in the immediately preceding three (3) years and used in Idaho public schools, and all electronically available curricular materials used in Idaho public schools are to be maintained at the state department of education at all times and open to the public.

“Curricular materials” is defined as textbook and instructional media including software, audio/visual media and internet resources. [I.C., § 33-118A, as added by 1986, ch. 302, § 1, p. 752; am. 1998, ch. 88, § 2, p. 298; am. 2001, ch. 183, § 9, p. 613; am. 2008, ch. 217, § 1, p. 674.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 217, in the last sentence in the first paragraph, inserted “in the immediately pre-

ceding three (3) years” and “and all electronically available curricular materials used in Idaho public schools.”

33-119. Accreditation of secondary schools — Standards for elementary schools. — The state board shall establish standards for accreditation of any secondary school and set forth minimum requirements to be met by public, private and parochial secondary schools, and those in chartered school districts, for accredited status; and the board may establish such standards for all public elementary schools as it may deem necessary.

The board may withdraw accreditation from any secondary school after such period as it may establish when it has been determined that such school has failed or neglected to conform to accreditation standards; and it may reinstate such school as accredited when in its judgment such school has again qualified for accredited status. The board may further establish minimum requirements which any pupil shall meet to qualify for graduation from an accredited secondary school.

“Secondary school” for the purposes of this section shall mean a school which, for operational purposes, is organized and administered on the basis

of grades seven (7) through twelve (12), inclusive, or any combination thereof.

“Elementary school” for the purposes of this section shall mean a school which, for operational purposes, is organized and administered on the basis of grades one (1) through six (6), inclusive, one (1) through eight (8), inclusive, or any combination of grades one (1) through eight (8), inclusive. [1963, ch. 13, § 19, p. 27.]

STATUTORY NOTES

Cross References. — Classifications of school districts, § 33-302.

Reclassification of district as elementary district when high school not maintained, § 33-303.

Reclassification of elementary districts for purpose of establishing secondary school, § 33-303.

JUDICIAL DECISIONS

Equal Education Opportunity.

The state department of education, state board of education, and superintendent of public instruction are empowered under Const., Art. IX, § 2, §§ 33-116, 33-118 and

this section and required under federal law to ensure that the needs of students with limited English language proficiency are addressed. *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69 (9th Cir. 1981).

33-120. Uniform reporting. — (1) The state superintendent of public instruction shall prescribe forms and format for uniform accounting for financial and statistical reports and performance measurements to provide consistent and uniform reporting by school districts.

(2) The state board of education may adopt rules pursuant to the provisions of chapter 52, title 67, Idaho Code, and under authority of section 33-105, Idaho Code, to provide for and implement a student information management system. [1963, ch. 13, § 20, p. 27; am. 1985, ch. 107, § 1, p. 191; am. 1994, ch. 175, § 1, p. 402; am. 2006, ch. 244, § 1, p. 740.]

STATUTORY NOTES

Cross References. — Financial and statistical reports of districts, § 33-701.

State superintendent of public instruction, § 67-1501 et seq.

Amendments. — The 2006 amendment, by ch. 244, added the subsection (1) designation and subsection (2).

33-120A. Idaho student information management system. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-120A, as added by 2003,

ch. 299, § 1, p. 814, was repealed by S.L. 2005, ch. 257, § 7.

33-121. Examination of books at instance of the state board. — Whenever in its judgment the public welfare demands it, the state board may direct the trustees of any school district to cause an examination of the books and accounts, and the assets and liabilities of their district, to be

made, and a report thereof to be made to the state board. Upon failure or neglect of the board of trustees to have such examination and report made within a reasonable time, the state board may cause the same to be made, and the cost of such examination and report shall be paid by the district. [1963, ch. 13, § 21, p. 27.]

STATUTORY NOTES

Cross References. — District audits filed with state board, § 33-701.

Junior colleges, examination of books, § 33-2114.

33-122. Sanitation — Safety — Cooperation with other state agencies. — The state board shall cooperate with the board of health and welfare in establishing regulations covering school building sanitation, sewage disposal, water supply, or other matters affecting the public health, as shall in the opinion of the board be required. It may cooperate with any other department of state government in any matter in which such cooperation will be of assistance in carrying out its duties.

Whenever the state board has reason to believe that any building used as a school building is so structurally unsafe, unsound, or deficient, as to constitute a hazard to the pupils attending thereat, it shall have authority to cause an examination of such building to be made by a competent engineer. The engineer making such examination shall report, in writing, to the state board, setting out in what respect such building is unsafe, unsound, or deficient, as aforesaid.

The state board shall transmit a copy of such report to the board of trustees of the school district wherein such building is situate, or to the governing body of any such school if it not be a public school, and the same shall be kept in the administrative office of such school district, or school, there to be available for public inspection. The state board shall also order and cause to be published a summary of such engineer's report in at least one (1) issue of a newspaper having general circulation in the same school district, or in the area of the same school if it not be a public school. [1963, ch. 13, § 22, p. 27; am. 1974, ch. 23, § 10, p. 633.]

STATUTORY NOTES

Cross References. — Industrial commission, duty to cooperate with, § 72-517.

1974, ch. 23, provided the act should be in full force and effect on and after July 1, 1974.

Effective Dates. — Section 182 of S.L.

33-123. Education for inmates under jurisdiction of department of correction. — The state board, in cooperation with the state board of correction, shall have prepared suitable courses of study, including professional-technical training, for prisoners held under the jurisdiction of the department of correction, and the state board of correction shall make arrangements carrying into effect all provisions for the education of prisoners who are under the jurisdiction of the department of correction to the extent possible within the limits of moneys appropriated by the state legislature. Such educational opportunities shall be limited to those inmates

who have a need, such need to be determined by the staff of the department of correction, and can benefit from training, and those inmates whose degree of custody classification allows participation in the classroom environment provided. [1963, ch. 13, § 23, p. 27; am. 1982, ch. 64, § 1, p. 126; am. 1999, ch. 329, § 1, p. 852.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1982, ch. 64 declared an emergency. Approved March 15, 1982.

33-124. Special vocational education programs. — Any school district, or combination of school districts, within the state of Idaho, including charter districts, may submit to the state board of education a plan for the operation of a program providing instruction and training for handicapped students under the age of twenty-two (22) years in vocational education. The state board of education may approve or disapprove such a plan. However, should the state board approve such a plan, then the program operated under such a plan shall be entitled to all considerations and benefits which by law are available to the educational programs of the school districts. [I.C., § 33-124, as added by 1969, ch. 218, § 1, p. 713.]

33-125. State department of education — Creation — Duties. — There is hereby established as an executive agency of the state board of education a department known as the state department of education. The state superintendent shall serve as the executive officer of such department and shall have the responsibility for carrying out policies, procedures and duties authorized by law or established by the state board of education for all elementary and secondary school matters, and to administer grants for the promotion of science education as provided in sections 33-128 and 33-129, Idaho Code. The department shall perform the duties assigned to it as specified in section 67-5745D, Idaho Code, relating to the Idaho education network. [1972, ch. 126, § 1, p. 249; am. 1974, ch. 10, § 7, p. 49; am. 1991, ch. 139, § 1, p. 330; am. 2008, ch. 260, § 2, p. 753.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 260, added the last sentence.

Compiler's Notes. — Section 1 of S.L. 2008, ch. 260 provided "LEGISLATIVE FINDINGS. The Legislature finds that:

"(1) High-bandwidth connectivity is an essential component of education infrastructure in the 21st century;

"(2) Idaho is behind in the use of high-bandwidth connectivity and technology to deliver educational opportunities to students and teachers;

"(3) High-bandwidth connectivity and technology can enable advanced and specialized courses to be shared within or among school districts and allow students access to concurrent enrollment offered by higher education; and

"(4) A common high-bandwidth connectivity and technology platform will enable scarce educational resources to be shared throughout the state."

33-126. Organization of department. — The state department of education shall be organized in a manner as determined by the state board of education acting on the recommendations of the executive secretary. [1972, ch. 126, § 2, p. 249; am. 1974, ch. 10, § 8, p. 49.]

STATUTORY NOTES

Effective Dates. — Section 21 of S.L. 1974, ch. 10 provided the act should be in full force and effect on and after July 1, 1974.

33-127. Employees. — Employees of the department shall be appointed by the superintendent of public instruction in accordance with the provisions of chapter 16, title 59, and chapter 53, title 67, Idaho Code. [1972, ch. 126, § 3, p. 249; am. 1989, ch. 94, § 1, p. 220.]

33-128. Statement of public purpose. — The Idaho constitution established a system of free common schools recognizing that “the stability of a republican form of government depends mainly upon the intelligence of the people.” The legislature finds that there is a need for expanded educational experiences including a need for additional positive science education experiences for the youth of this state. The legislature finds that it is in the public interest to encourage science education opportunities through cooperative efforts with private nonprofit organizations offering science education programs. [I.C., § 33-128, as added by 1991, ch. 139, § 2, p. 330.]

33-129. Matching grants for science education programs — Grant criteria. — The state department of education shall administer a program of matching grants to encourage the expansion or maintenance of science education programs in the state of Idaho. Matching grants shall only be made to nonprofit corporations incorporated or registered in the state of Idaho and which shall have conducted such a science education program for a minimum of one (1) year. Grants shall require the applicant to provide at least one-half (1/2) of the financial support for the science education program with money or in-kind contributions.

“Science education programs” include, but are not limited to, demonstration programs intended to encourage knowledge of and interest in the disciplines of science among Idaho’s elementary and secondary school students.

The state department of education shall administer this program with such funds as are appropriated to the science education program. Competing grant applications shall be evaluated and funding decisions shall be made based upon the department’s judgment as to the probable effectiveness of the various proposals in furthering the purposes of this act. [I.C., § 33-129, as added by 1991, ch. 139, § 3, p. 330.]

STATUTORY NOTES

Compiler's Notes. — The words “this act” at the end of the second sentence of the third paragraph refer to S.L. 1991, ch. 139, which is compiled as §§ 33-125, 33-128 and 33-129.

33-130. Criminal history checks for school district employees or applicants for certificates or individuals having contact with students — Statewide list of substitute teachers. — The department of education, through the cooperation of the Idaho state police, shall establish a system to obtain a criminal history check on individuals to include, but is not limited to, certificated and noncertificated employees, all applicants for certificates pursuant to chapter 12, title 33, Idaho Code, substitute staff, individuals involved in other types of student training such as practicums and internships, and on all individuals who have unsupervised contact with students in a K-12 setting. The criminal history check shall be based on a completed ten (10) finger fingerprint card or scan and shall include, at a minimum, the following state and national databases:

- (1) Idaho bureau of criminal identification;
- (2) Federal bureau of investigation (FBI) criminal history check; and
- (3) Statewide sex offender register.

The state department of education shall charge all such individuals a fee of forty dollars (\$40.00) for undergoing a criminal history check pursuant to this section. The fee shall be sufficient to cover costs charged by the federal bureau of investigation, the state police and the state department of education. A record of all background checks shall be maintained at the state department of education in a data bank for all employees of a school district with a copy going to the applicant upon request.

The state department of education shall maintain a statewide list of substitute teachers. The term “substitute teacher” shall have the meaning as provided in section 33-512(15), Idaho Code.

The Idaho state police and the department of education shall implement a joint exercise of powers agreement pursuant to sections 67-2328 through 67-2333, Idaho Code, necessary to implement the provisions of this section. [I.C., § 33-130, as added by 1996, ch. 375, § 1, p. 1273, am. 2000, ch. 469, § 80, p. 1450; am. 2008, ch. 349, § 1, p. 961.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 349, rewrote the section to the extent that a detailed comparison is impracticable.

33-130A. Criminal history checks for private or parochial school employees or contractors. — If requested by the principal or governing board of a private or parochial school, the department of education, through the cooperation of the department of law enforcement [Idaho state police], shall establish a system to obtain a criminal history check on employees of the school or persons entering into contracts with the school. The criminal history check and fees shall be as provided in section 33-130, Idaho Code. [I.C., § 33-130A, as added by 2000, ch. 310, § 1, p. 1047.]

STATUTORY NOTES

Compiler's Notes. — Following the revision of chapter 29, title 67, Idaho Code, by S.L. 1980, Chapter 469, the reference to the

"department of law enforcement" in the first sentence, should be to the "Idaho state police".

CHAPTER 2

ATTENDANCE AT SCHOOLS

SECTION.

- 33-201. School age.
- 33-202. School attendance compulsory.
- 33-203. Dual enrollment.
- 33-204. Exemption for cause.
- 33-205. Denial of school attendance.
- 33-206. Habitual truant defined.
- 33-207. Proceedings against parents or guardians.

SECTION.

- 33-208. Kindergartens and child attendance not compulsory.
- 33-209. Transfer of student records — Duties.
- 33-210. Students using or under the influence of alcohol or controlled substances.
- 33-211. Students' driver's licenses.

33-201. School age. — The services of the public schools of this state are extended to any acceptable person of school age. "School age" is defined as including all persons resident of the state, between the ages of five (5) and twenty-one (21) years. For the purposes of this section, the age of five (5) years shall be attained when the fifth anniversary of birth occurs on or before the first day of September of the school year in which the child is to enroll in kindergarten. For a child enrolling in the first grade, the age of six (6) years must be reached on or before the first day of September of the school year in which the child is to enroll. Any child of the age of five (5) years who has completed a private or public out-of-state kindergarten for the required four hundred fifty (450) hours but has not reached the "school age" requirement in Idaho shall be allowed to enter the first grade.

For resident children with disabilities who qualify for special education and related services under the federal individuals with disabilities education act (IDEA) and subsequent amendments thereto, and applicable state and federal regulations, "school age" shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years. [1963, ch. 13, § 24, p. 27; am. 1975, ch. 42, § 3, p. 73; am. 1988, ch. 290, § 1, p. 928; am. 1989, ch. 126, § 1, p. 276; am. 1993, ch. 121, § 1, p. 310; am. 1996, ch. 311, § 1, p. 1018; am. 1998, ch. 23, § 1, p. 138.]

STATUTORY NOTES

Cross References. — Exclusion of pupils not of school age, § 33-512.

Federal References. — The federal individual with disabilities education act, referred to in the last paragraph, is codified as 20 USCS § 1400 et seq.

Compiler's Notes. — Section 1 of S.L. 1975, ch. 42 read: "The establishment and maintenance of a general and uniform system

of free common public schools, including public kindergartens, is the responsibility of the people of the state of Idaho. In recognition of this, provision for state supported public kindergartens shall be established."

Effective Dates. — Section 2 of S.L. 1996, ch. 311 declared an emergency. Approved March 18, 1996.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Free Tuition.

Right of child to attend school without payment of tuition depended on parents' legal

residence. *Smith v. Binford*, 44 Idaho 244, 256 P. 366 (1927).

OPINIONS OF ATTORNEY GENERAL

All children, even those who have completed a portion of kindergarten prior to moving into Idaho during the school year, must meet the "school age" requirement of turning five prior to the sixteenth day of August [now September 1] in order to be allowed to enroll in an Idaho public school kindergarten. OAG 93-4.

If a child does not attend a kindergarten, then he or she must turn six prior to the sixteenth day of August [now September 1] to be enrolled in the first grade. If this requirement cannot be met, the child should be placed in kindergarten. However, once the child is properly enrolled, it is within the

discretion of the school officials, thereafter, to change that placement if it is in the child's best interest. OAG 93-4.

If a child has completed a kindergarten program but is not six years old prior to August 16 [now September 1] that child may, but is not entitled to, enter the first grade. The school personnel will determine what is the appropriate placement of that child. OAG 93-4.

The first grade age requirement of six years old prior to August 16 [now September 1] applies only to those students who have not completed kindergarten. OAG 93-4.

33-202. School attendance compulsory. — The parent or guardian of any child resident in this state who has attained the age of seven (7) years at the time of the commencement of school in his district, but not the age of sixteen (16) years, shall cause the child to be instructed in subjects commonly and usually taught in the public schools of the state of Idaho. Unless the child is otherwise comparably instructed, the parent or guardian shall cause the child to attend a public, private or parochial school during a period in each year equal to that in which the public schools are in session; there to conform to the attendance policies and regulations established by the board of trustees, or other governing body, operating the school attended. [1963, ch. 13, § 25, p. 27; am. 1992, ch. 243, § 1, p. 721.]

STATUTORY NOTES

Cross References. — Child labor law, § 44-1301 et seq.

School trustees, to report truants, §§ 20-510, 20-527.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Legislative intent.

Constitutionality.

Whereas the reader of this section is told that a child of school age is to be instructed in subjects commonly and usually taught in the public schools in a manner comparable to that of instruction in the public schools and in conformance with those schools' attendance

policies and regulations, and since anyone sincerely desiring to comply with the law has ready access through the department of education to the list of subjects required to be taught, and to the local school district's policies and regulations, this section is not unconstitutional for vagueness. *Bayes v. State*, 117

Idaho 96, 785 P.2d 660 (Ct. App. 1989).

Legislative Intent.

The legislative scheme providing that a petition for the initial determination of whether a child is being adequately educated will be filed pursuant to the Youth Rehabilitation Act (YRA) (now Juvenile Corrections Act) is to ensure that a determination as to the adequacy of a child's education is made by a court of competent jurisdiction without the stigma of criminal proceedings attaching. Even more obvious is society's objective, as expressed by the legislature in the enactment of the compulsory education statutes and the YRA [now JCA], to have Idaho's children

educated so that they may be productive citizens not disadvantaged by lack of education adequate to meet the demands of modern life; the goal is not to label children "juvenile delinquents" by bringing them before the courts, but to achieve society's objective by positive and orderly resolution of the parties' differences within an impartial legal framework. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

Cited in: *Segali v. Idaho Youth Ranch, Inc.*, 738 F. Supp. 1302 (D. Idaho 1990); *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

OPINIONS OF ATTORNEY GENERAL

The Child Protective Act may be available as a means of addressing situations in which a child is not attending a public school. OAG 83-12.

The compulsory attendance law is valid and

enforceable. OAG 83-12.

The local school board must determine whether the requirements of this section are being met. OAG 83-12.

RESEARCH REFERENCES

A.L.R. — What constitutes a private, parochial, or denominational school within statute making attendance at such school a compli-

ance with compulsory school attendance law. 65 A.L.R.3d 1222.

33-203. Dual enrollment. — (1) The parent or guardian of a child of school age who is enrolled in a nonpublic school or a public charter school shall be allowed to enroll the student in a public school for dual enrollment purposes. The board of trustees of the school district shall adopt procedures governing enrollment pursuant to this section. If enrollment in a specific program reaches the maximum for the program, priority for enrollment shall be given to a student who is enrolled full time in the public noncharter school.

(2) Any student participating in dual enrollment may enter into any program in the public school available to other students subject to compliance with the eligibility requirements herein and the same responsibilities and standards of behavior and performance that apply to any student's participation in the activity, except that the academic eligibility requirements for participation in nonacademic activities are as provided for herein.

(3) Any school district shall be allowed to include dual-enrolled nonpublic school and public charter school students for the purposes of state funding only to the extent of the student's participation in the public school programs.

(4) Oversight of academic standards relating to participation in nonacademic public school activities shall be the responsibility of the primary educational provider for that student. In order for any nonpublic school student or public charter school student to participate in nonacademic public school activities for which public school students must demonstrate academic proficiency or eligibility, the nonpublic school or public charter

school student shall demonstrate composite grade-level academic proficiency on any state board of education recognized achievement test, portfolio, or other mechanism as provided for in state board of education rules. Additionally, a student shall be eligible if he achieves a minimum composite, core or survey test score within the average or higher than average range as established by the test service utilized on any nationally-normed test. Demonstrated proficiency shall be used to determine eligibility for the current and next following school years. School districts shall provide to nonpublic students who wish to participate in dual enrollment activities the opportunity to take state tests or other standardized tests given to all regularly enrolled public school students.

(5) A public school student who has been unable to maintain academic eligibility is ineligible to participate in nonacademic public school activities as a nonpublic school or public charter school student for the duration of the school year in which the student becomes academically ineligible and for the following academic year.

(6) A nonpublic school or public charter school student participating in nonacademic public school activities must reside within the attendance boundaries of the school for which the student participates.

(7) Dual enrollment shall include the option of joint enrollment in a regular public school and an alternative public school program. The state board of education shall establish rules that provide funding to school districts for each student who participates in both a regular public school program and an alternative public school program.

(8) Dual enrollment shall include the option of enrollment in a post-secondary institution. Any credits earned from an accredited post-secondary institution shall be credited toward state board of education high school graduation requirements.

(9) A nonpublic student is any student who receives educational instruction outside a public school classroom and such instruction can include, but is not limited to, a private school or a home school. [I.C., § 33-203, as added by 1995, ch. 224, § 1, p. 775; am. 1999, ch. 387, § 1, p. 1081; am. 2002, ch. 106, § 1, p. 289.]

STATUTORY NOTES

Prior Laws. — Former § 33-203, which comprised S.L. 1963, ch. 13, § 26, p. 27, was repealed by S.L. 1979, ch. 71, § 1.

33-204. Exemption for cause. — When a licensed physician or psychiatrist shall state in writing to the board of trustees of a school district that the physical, mental or emotional condition of a child does not permit attendance at school, and a petition is filed with the board by the parent or guardian of the child requesting such child to be exempt from the provisions of section 33-202, the board of trustees may at its discretion grant the requested exemption during the existence of such condition. The board may, from time to time as it may determine, require additional examination of the child and a report thereon. [1963, ch. 13, § 27, p. 27.]

33-205. Denial of school attendance. — The board of trustees may deny enrollment, or may deny attendance at any of its schools by expulsion, to any pupil who is an habitual truant, or who is incorrigible, or whose conduct, in the judgment of the board, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state. Any pupil having been denied enrollment or expelled may be enrolled or readmitted to the school by the board of trustees upon such reasonable conditions as may be prescribed by the board; but such enrollment or readmission shall not prevent the board from again expelling such pupil for cause.

Provided however, the board shall expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who has been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis. Discipline of students with disabilities shall be in accordance with the requirements of federal law part B of the individuals with disabilities education act and section 504 of the rehabilitation act. An authorized representative of the board shall report such student and incident to the appropriate law enforcement agency.

No pupil shall be expelled nor denied enrollment without the board of trustees having first given written notice to the parent or guardian of the pupil, which notice shall state the grounds for the proposed expulsion or denial of enrollment and the time and place where such parent or guardian may appear to contest the action of the board to deny school attendance, and which notice shall also state the rights of the pupil to be represented by counsel, to produce witnesses and submit evidence on his own behalf, and to cross-examine any adult witnesses who may appear against him. Within a reasonable period of time following such notification, the board of trustees shall grant the pupil and his parents or guardian a full and fair hearing on the proposed expulsion or denial of enrollment. However, the board shall allow a reasonable period of time between such notification and the holding of such hearing to allow the pupil and his parents or guardian to prepare their response to the charge. Any pupil who is within the age of compulsory attendance, who is expelled or denied enrollment as herein provided, shall come under the purview of the juvenile corrections act, and an authorized representative of the board shall, within five (5) days, give written notice of the pupil's expulsion to the prosecuting attorney of the county of the pupil's residence.

The superintendent of any district or the principal of any school may temporarily suspend any pupil for disciplinary reasons, including student harassment, intimidation or bullying, or for other conduct disruptive of good order or of the instructional effectiveness of the school. A temporary suspension by the principal shall not exceed five (5) school days in length; and the school superintendent may extend the temporary suspension an additional ten (10) school days. Provided, that on a finding by the board of

trustees that immediate return to school attendance by the temporarily suspended student would be detrimental to other pupils' health, welfare or safety, the board of trustees may extend the temporary suspension for an additional five (5) school days. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any pupil who has been suspended may be readmitted to the school by the superintendent or principal who suspended him upon such reasonable conditions as said superintendent or principal may prescribe. The board of trustees shall be notified of any temporary suspensions, the reasons therefor, and the response, if any, thereto.

The board of trustees of each school district shall establish the procedure to be followed by the superintendent and principals under its jurisdiction for the purpose of effecting a temporary suspension, which procedure must conform to the minimal requirements of due process. [1963, ch. 13, § 28, p. 27; am. 1973, ch. 294, § 1, p. 618; am. 1976, ch. 86, § 1, p. 293; am. 1978, ch. 67, § 1, p. 135; am. 1992, ch. 47, § 1, p. 149; am. 1995, ch. 248, § 2, p. 819; am. 1995, ch. 250, § 1, p. 825; am. 1995, ch. 252, § 1, p. 827; am. 1998, ch. 186, § 1, p. 680; am. 2002, ch. 348, § 1, p. 994; am. 2006, ch. 313, § 1, p. 969.]

STATUTORY NOTES

Cross References. — Discipline of unruly pupils, § 33-512.

Juvenile Corrections Act, § 20-501 et seq.

Amendments. — This section was amended by three 1995 acts — ch. 248, § 2, ch. 250, § 1 and ch. 252, § 1, all effective July 1, 1995 — which do not appear to conflict and have been compiled together.

The 1995 amendment, by ch. 248, § 2, added the second paragraph.

The 1995 amendment, by ch. 250, § 1, in the fourth paragraph in the second sentence added "by the principal" following "temporary suspension"; added "and the school superintendent may extend the temporary suspension an additional ten (10) school days." at the end of the sentence and created the third sentence by substituting "Provided" for "provided".

The 1995 amendment, by ch. 252, § 1, in the first paragraph at the end of the first sentence added "or who has been expelled from another school district"; in the third

paragraph in the first sentence added "nor denied enrollment" following "No pupil shall be expelled"; and "or denial of enrollment" preceding "and the time and place"; at the end of the second sentence added "or denial of enrollment"; and in the fourth sentence added "or denied enrollment" preceding "as herein provided".

The 2006 amendment, by ch. 313, inserted "including student harassment, intimidation or bullying" near the beginning of the fourth paragraph.

Federal References. — Part B of the individuals with disabilities education act, referred to in the second paragraph, is codified as 20 USCS § 1411 et seq.

Section 504 of the rehabilitation act of 1973, referred to in the second paragraph, is codified as 29 USCS § 794.

Compiler's Notes. — The juvenile corrections act, referred to in the third paragraph, is codified as § 20-501 et seq.

JUDICIAL DECISIONS

ANALYSIS

Discretion of board.

Regulation as to appearance.

Discretion of Board.

The writ of mandamus was improperly issued to students who had been expelled from

school for having a pellet gun on school property in violation of the federal firearms laws and district policy, where the students were

provided adequate notice, a hearing, and the school board acted within the scope of its discretion under this section in expelling the students. *Rogers v. Gooding* Pub. Joint Sch. Dist. No. 231, 135 Idaho 480, 20 P.3d 16 (2001).

Regulation as to Appearance.

A regulation requiring that students in a high school keep their hair length "off the

eyes, off the ear, and off the collar" was held unconstitutional when the school authorities failed to show that there was any substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist.* No. 25, 94 Idaho 32, 480 P.2d 878 (1971).

Cited in: *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

RESEARCH REFERENCES

A.L.R. — Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 A.L.R.3d 996.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 A.L.R.3d 864.

33-206. Habitual truant defined. — (1) An habitual truant is:

(a) Any public school pupil who, in the judgment of the board of trustees, repeatedly has violated the attendance regulations established by the board; or

(b) Any child whose parents or guardians, or any of them, have failed or refused to cause such child to be instructed as provided in section 33-202, Idaho Code.

(2) A child who is an habitual truant shall come under the purview of the juvenile corrections act if he or she is within the age of compulsory attendance. [1963, ch. 13, § 29, p. 27; am. 2002, ch. 348, § 2, p. 994; am. 2005, ch. 60, § 1, p. 217.]

STATUTORY NOTES

Compiler's Notes. ⁴ — The juvenile corrections act, referred to in subsection (2), is codified as § 20-501 et seq.

JUDICIAL DECISIONS

Legislative Intent.

The legislative scheme providing that a petition for the initial determination of whether a child is being adequately educated will be filed pursuant to the Youth Rehabilitation Act (YRA) [now Juvenile Corrections Act (JCA)] is to ensure that a determination as to the adequacy of a child's education is made by a court of competent jurisdiction without the stigma of criminal proceedings attaching. Even more obvious is society's objective, as expressed by the legislature in the

enactment of the compulsory education statutes and the YRA [JCA], to have Idaho's children educated so that they may be productive citizens not disadvantaged by lack of education adequate to meet the demands of modern life; the goal is not to label children "juvenile delinquents" by bringing them before the courts, but to achieve society's objective by positive and orderly resolution of the parties' differences within an impartial legal framework. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

OPINIONS OF ATTORNEY GENERAL

Expulsion is not a prerequisite to proceeding under this section. OAG 83-12.

33-207. Proceedings against parents or guardians. — [(1)] Whenever the parents or guardians of any child between the ages of seven (7) years, as qualified in section 33-202, Idaho Code, and sixteen (16) years, have failed, neglected or refused to place the child in school as provided in this chapter or to have the child comparably instructed, or knowingly have allowed a pupil to become an habitual truant, proceedings shall be brought against such parent or guardian under the provisions of the juvenile corrections act or as otherwise provided in subsection (2) of this section.

(2) Whenever it is determined by the board of trustees of any school district that a child enrolled in public school is an habitual truant, as defined in section 33-206, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the child's residence. Proceedings may be brought directly against any parent or guardian of a public school pupil who is found to have knowingly allowed such pupil to become an habitual truant, and such parent or guardian shall be guilty of a misdemeanor.

(3) Whenever it is determined by the board under provisions providing due process of law for the student and his or her parents that the parents or guardians of any child not enrolled in a public school are failing to meet the requirements of section 33-202, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the pupil's residence and recommend that a petition shall be filed in the magistrates division of the district court of the county of the pupil's residence, in such form as the court may require under the provisions of section 20-510, Idaho Code. [1963, ch. 13, § 30, p. 27; am. 2004, ch. 23, § 5, p. 25; am. 2005, ch. 60, § 2, p. 217.]

STATUTORY NOTES

Cross References. — Juvenile Corrections Act, § 20-501 et seq.

Penalty for misdemeanor where none prescribed, § 18-317.

Compiler's Notes. — The bracketed des-

ignation for subsection (1) was added by the compiler, as S.L. 2005, Chapter 60, which added subsections (2) and (3), contained no designation for the first paragraph.

JUDICIAL DECISIONS

Legislative Intent.

The legislative scheme providing that a petition for the initial determination of whether a child is being adequately educated will be filed pursuant to the Youth Rehabilitation Act [now Juvenile Corrections Act] is to ensure that a determination as to the adequacy of a child's education is made by a court of competent jurisdiction without the stigma of criminal proceedings attaching. Even more obvious is society's objective, as expressed by

the legislature, to have Idaho's children educated so that they may be productive citizens not disadvantaged by lack of education adequate to meet the demands of modern life; the goal is not to label children "juvenile delinquents" by bringing them before the courts, but to achieve society's objective by positive and orderly resolution of the parties' differences within an impartial legal framework. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

33-208. Kindergartens and child attendance not compulsory. — It shall not be compulsory for individual school districts to establish a kindergarten program; and it shall not be mandatory for a child who is

eligible by age for attendance to enroll in an established public kindergarten. [I.C., § 33-208, as added by 1975, ch. 42, § 2, p. 73.]

33-209. Transfer of student records — Duties. — Whenever a student transfers from one (1) school to another, within the district, within the state, or elsewhere, and the sending school is requested to forward student records, the sending school shall respond by forwarding a certified copy of the transferred student's record within ten (10) days, except as provided in section 18-4511, Idaho Code. When the school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information shall be included in the transfer of records but shall be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other administrative officer of the school.

The parent or guardian of a student transferring from out-of-state to a school within the state of Idaho is required, if requested, to furnish the school within this state accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior or disciplinary action involving the student. This information shall be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other administrative officer of the school.

Failure of the parent or guardian to furnish the required records, or failure to request of the administration of the previous school to provide the required records, shall constitute adequate grounds to deny enrollment to the transferring student or to suspend or expel the student if already enrolled. [I.C., § 33-209, as added by 1994, ch. 174, § 1, p. 401; am. 1998, ch. 186, § 2, p. 680.]

33-210. Students using or under the influence of alcohol or controlled substances. — (1) It is legislative intent that parental involvement in all aspects of a child's education in the public school system remain a priority. Substance abuse prevention programs and counseling for students attending public schools are no exception. Consequently, it is the duty of the board of trustees of each school district, including specially chartered school districts, and governing boards of charter schools, to adopt and implement policies specifying how personnel shall respond when a student discloses or is reasonably suspected of using or being under the influence of alcohol or any controlled substance defined by section 37-2732C, Idaho Code. Such policies shall include provisions that anonymity will be provided to the student on a faculty "need to know" basis, when a student voluntarily discloses using or being under the influence of alcohol or any controlled substance while on school property or at a school function, except as deemed reasonably necessary to protect the health and safety of others. Notification of the disclosure and availability of counseling for students shall be provided to parents, the legal guardian or child's custodian. However, once a student is reasonably suspected of using or being under the influence of alcohol or a controlled substance in violation of section 37-2732C, Idaho Code, regard-

less of any previous voluntary disclosure, the school administrator or designee shall contact the student's parent, legal guardian or custodian, and report the incident to law enforcement. The fact that a student has previously disclosed use of alcohol or a controlled substance shall not be deemed a factor in determining reasonable suspicion at a later date.

(2) In addition to policies adopted pursuant to this section, students may, at the discretion of the district board of trustees or governing board of a charter school, be subject to other disciplinary or safety policies, regardless whether the student voluntarily discloses or is reasonably suspected of using or being under the influence of alcohol or a controlled substance in violation of district or charter school policy or section 37-2732C, Idaho Code.

(3) The district board of trustees or the governing board of the charter school shall ensure that procedures are developed for contacting law enforcement and the student's parents, legal guardian or custodian regarding a student reasonably suspected of using or being under the influence of alcohol or a controlled substance. District and charter school policies formulated to meet the provisions of section 37-2732C, Idaho Code, and this section shall be made available to each student, parent, guardian or custodian by August 31, 2002, and thereafter as provided by section 33-512(6), Idaho Code.

(4) Any school district employee or independent contractor of an educational institution who has a reasonable suspicion that a student is using or is under the influence of alcohol or a controlled substance and, acting upon that suspicion, reports that suspicion to a school administrator or initiates procedures adopted by the board of trustees or governing board of the charter school pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by this section. Employees and independent contractors of educational institutions who intentionally harass a student through the misuse of the authority provided in this section shall not be immune from civil liability arising from the wrongful exercise of that authority and shall be guilty of a misdemeanor punishable by a fine not to exceed three hundred dollars (\$300).

(5) For the purposes of this section, the following definitions shall apply:

(a) "Reasonable suspicion" means an act of judgment by a school employee or independent contractor of an educational institution which leads to a reasonable and prudent belief that a student is in violation of school board or charter school governing board policy regarding alcohol or controlled substance use, or the "use" or "under the influence" provisions of section 37-2732C, Idaho Code. Said judgment shall be based on training in recognizing the signs and symptoms of alcohol and controlled substance use.

(b) "Intentionally harass" means a knowing and willful course of conduct directed at a specific student which seriously alarms, annoys, threatens or intimidates the student and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

(c) "Course of conduct" means a pattern or series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally and statutorily protected activity is not included within the meaning of "course of conduct." [I.C., § 33-210, as added by 1996, ch. 379, § 1, p. 1284; am. 1998, ch. 206, § 1, p. 731; am. 2002, ch. 353, § 1, p. 1007; am. 2006, ch. 244, § 2, p. 740.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 240, updated the citation at the end of subsection (3).

33-211. Students' driver's licenses. — The board of trustees of a school district and all employees of the school district are authorized to and shall administer the school district's portion of section 49-303A, Idaho Code, relating to driver's licenses and school attendance. [I.C., § 33-211, as added by 1996, ch. 348, § 6, p. 1159.]

STATUTORY NOTES

Effective Dates. — Section 6 of S.L. 1996, ch. 348, became law without the governor's signature, July 1, 1996.

CHAPTER 3

SCHOOL DISTRICTS

| SECTION. | SECTION. |
|--|---|
| 33-301. School districts bodies corporate. | 33-314. Appeal from order of state board of education. |
| 33-302. Classification of school districts. | 33-315. Cooperative educational services — Legislative intent declared. |
| 33-303. Reclassification of school districts. | 33-316. Cooperative contract to employ specialized personnel and/or purchase materials. |
| 33-304. Joint school districts. | 33-317. Cooperative service agency — Powers — Duties — Limitations. |
| 33-305. Naming and numbering school districts. | 33-318. Fair share of expenses — Appropriation from school district funds. |
| 33-306. Boundaries of school districts. | 33-319 — 33-350. [Reserved.] |
| 33-307. Correcting or altering school district boundaries. | 33-351. Subdistricts — Authority to establish — Election. |
| 33-308. Excision and annexation of territory. | 33-352. Establishment. |
| 33-309. Lapsed districts — Annexation. | 33-353. Nature and powers. |
| 33-310. Consolidation of school districts. | 33-354. Indebtedness — Bond issues. |
| 33-310A. Consolidation of contiguous school districts. | 33-355. Levy for plant facilities reserve fund — Election. |
| 33-310B. Feasibility study and plan for consolidation. | |
| 33-311. Plan of consolidation submitted to electors. | |
| 33-312. Division of school district. | |
| 33-313. Trustee zones. | |

33-301. School districts bodies corporate. — Each school district, now or hereafter established, when validly organized and existing, is declared to be a body corporate and politic, and in its corporate capacity may sue and be sued and may acquire, hold and convey real and personal property necessary to its establishment, extension and existence. It shall

have authority to issue negotiable coupon bonds and incur such other debt, in the amounts and manner, as provided by law. [1963, ch. 13, § 31, p. 27.]

STATUTORY NOTES

Cross References. — County commissioners to divide counties into school districts, § 31-803.

Junior college districts, cooperation with, § 33-2115.

School bonds, § 33-1101 et seq.

Supervision and control by state board of education, § 33-116.

JUDICIAL DECISIONS

Cited in: Idaho Schs. for Equal Educ. Opportunity v. State, 140 Idaho 586, 97 P.3d 453 (2004).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Agency of state.

Collateral attack.

Constitutionality of act organizing district.

Continuity of district.

District not municipal corporation.

District within two cities.

Implied powers.

Jurisdiction.

Presumptions.

Review.

Suits by and against.

Agency of State.

School district was agency of state, created by law solely for operation of school system for public benefit, and derived all of its powers from the former statute, being limited to such as were deemed necessary for that purpose. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

Collateral Attack.

Where creation of public corporation was authorized by the former statute and corporation had been organized under color of such authority, its corporate existence could not be inquired into in collateral proceeding. *Morgan v. Independent School Dist. No. 26-J*, 36 Idaho 372, 211 P. 529 (1922).

Where it was apparent that school district was at least corporation de facto, regularity of its organization could not be questioned in collateral proceeding, nor in any proceeding after period of six months from date of entry of order establishing such district. *Morgan v. Independent School Dist. No. 26-J*, 36 Idaho 372, 211 P. 529 (1922).

Constitutionality of Act Organizing District.

Supreme Court would not determine constitutionality of an act under which district was

organized in a proceeding which sought to have district declared void, and a bond issue enjoined where, subsequent to denial of relief, the bond issue was defeated and the district reorganized. *Terhaar v. Joint Class A School Dist. No. 241*, 77 Idaho 112, 289 P.2d 623 (1955).

Continuity of District.

The board was a continuous body or entity; the corporation continued unchanged and had the power to contract; its contracts were contracts of the board and not of its individual members. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

District Not Municipal Corporation.

School district was not municipal corporation. *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911); *Barton v. Alexander*, 27 Idaho 286, 148 P. 471 (1915).

District Within Two Cities.

Where district lies within two cities, purpose of former statute was satisfied by permitting necessary organization proceedings to be had within district and under supervision of board of commissioners of either county. *Morgan v. Independent School Dist. No. 26-J*, 36 Idaho 372, 211 P. 529 (1922).

Implied Powers.

The only implied powers which could be conceded to school district were such as were reasonably necessary to enable it to exercise powers expressly granted. *Olmstead v. Carter*, 34 Idaho 276, 200 P. 134 (1921).

Jurisdiction.

Jurisdiction did not depend upon recital of jurisdictional facts in petition, if they could be shown by record or proved at hearing. In re Segregation of School Dist. No. 58, 34 Idaho 222, 200 P. 138 (1921); *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

Presumptions.

Legal organization of rural high school would be presumed after two years. *Pickett v. Board of County Comm'rs*, 24 Idaho 200, 133 P. 112 (1913).

Review.

Writ of review did not lie to review action of board of county commissioners in the creation of a school district, as every action of board of county commissioners could be reviewed on appeal. *Bobbitt v. Blake*, 25 Idaho 53, 136 P. 211 (1913).

Suits By and Against.

An unqualified grant of power "to sue and be sued" carried with it all powers that were

ordinarily incident to the prosecution and defense of a suit at law or in equity. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

One district could maintain an action against another, where, by either mistake, fraud, or inefficiency of public servants, the one district had received and expended for educational purposes, in its territory, more than its share of the public fund; and the other district by reason thereof had received less than its share. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

Each school district, whether common or independent, was made a body corporate and was given the power to sue and be sued. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

School districts had the authority to maintain a suit against the State of Idaho challenging the constitutionality of the state's system of funding public schools where the school districts alleged they were being deprived of funds they were entitled to under Const., Art. IX, § 1. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

RESEARCH REFERENCES

A.L.R. — Modern status of doctrine or sovereign immunity as applied to public schools and institutions of higher learning. 33 A.L.R.3d 703.

Tort liability of public schools. 33 A.L.R.3d

703; 34 A.L.R.3d 1166; 23 A.L.R.5th 1; 35 A.L.R.3d 725; 35 A.L.R.3d 758; 36 A.L.R.3d 361; 37 A.L.R.3d 712; 37 A.L.R.3d 738; 38 A.L.R.3d 830.

33-302. Classification of school districts. — Elementary school districts shall give instruction only to pupils in grades one (1) through eight (8), and may give instruction in kindergarten. All other school districts shall give instruction to pupils in grades one (1) through twelve (12), and may give instruction in kindergarten, and shall maintain secondary schools giving instruction to pupils in grades seven (7) through twelve (12), or any combination of such grades.

Any school district maintaining its only secondary school building situate not less than twenty-five (25) miles from the nearest Idaho secondary school, and which employs not less than six (6) teachers within its district, may be authorized by the state board of education to instruct pupils in two (2) or more grades above grade seven (7).

Whenever any district lies, or shall lie, in more than one (1) county it shall be designated as a joint district of its class. [1963, ch. 13, § 32, p. 27; am. 1975, ch. 42, § 4, p. 73.]

STATUTORY NOTES

Cross References. — Accreditation of secondary schools by state board, § 33-119.

JUDICIAL DECISIONS

Cited in: *Peterson v. Minidoka County Sch. Dist.* No. 331, 118 F.3d 1351 (9th Cir. 1997).

33-303. Reclassification of school districts. — a. Whenever the board of trustees of an elementary school district shall propose to submit to the qualified electors of the district the question of issuance of bonds for the purpose of acquiring or building any secondary school building, or whenever the board of trustees of an elementary school district shall propose to otherwise establish, or to re-establish, a secondary school, said board of trustees shall first petition the state board of education to reclassify the district. Any such petition shall be in writing and shall contain such information as will enable the state board of education to determine the feasibility of maintaining an accredited secondary school by the petitioning district.

If the state board of education shall determine that the maintenance of an accredited secondary school by the petitioning elementary school district is feasible, it shall reclassify such district but such reclassification shall be for a period of not more than three (3) years, at the end of which period the state board of education shall review its action. If, at the time of review, the district is maintaining an accredited secondary school, its reclassification shall be made permanent, subject only to the provisions of subsection (b) of this section. If, at the time of review, the district is not maintaining an accredited secondary school, the state board of education shall revoke the temporary reclassification and the district shall revert to the classification of an elementary school district.

b. If any school district, other than an elementary school district, shall have maintained no secondary school within its area for a period of five (5) successive years, the state board of education may, at any time thereafter and while such district continues to maintain no secondary school, reclassify such district as an elementary school district.

c. Whenever the state board of education shall reclassify any district, as in this section provided, written notice thereof shall be given to the board of trustees of such district and to the board of county commissioners of any county in which the district may lie. [1963, ch. 13, § 33, p. 27.]

STATUTORY NOTES

Cross References. — Support program, effect upon, § 33-1008.

Notice by mail, § 60-109A.

33-304. Joint school districts. — In any joint district, the duties imposed upon, and the records required to be kept by, the county commis-

sioners or any other county officer, in respect to school districts, including the assessment of taxable property and the levying of and collection of taxes, shall be performed or kept by the commissioners and other county officers in each county in which the district lies as though the portion of the district in each county were a separate district therein.

One (1) of the counties in which a joint district lies shall be the home county of the district.

When a joint district is created by the division of a county, or through the annexation of any territory by the state board of education, the board of trustees of such district shall designate its home county and give notice thereof to the state board of education and to the board of county commissioners in each county in which the district lies. [1963, ch. 13, § 34, p. 27.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

In general.

Joint control of property.

In General.

County commissioners of county in which a portion of joint school district is located might segregate such portion and form same into a common school district. *Bobbitt v. Blake*, 25 Idaho 53, 136 P. 211 (1913).

Former law providing for formation of joint independent and rural high school districts was designed to admit of creation of joint independent school district, but such end was not to be accomplished by separate organiza-

tion in each county, but same course must be pursued as in organization of districts lying wholly within one county. *Morgan v. Independent School Dist. No. 26-J*, 36 Idaho 372, 211 P. 529 (1922).

Joint Control of Property.

Provisions of the former statute were inconsistent with idea of joint control of school property by separate districts. *Olmstead v. Carter*, 34 Idaho 276, 200 P. 134 (1921).

33-305. Naming and numbering school districts. — Each school district as the same is organized on the effective date of this act shall bear the same number as theretofore. Excepting specially chartered school districts, each school district operating a secondary school, or secondary schools, on said date shall be designated by number and county, after the following style:

School District No., County, State of Idaho, or Joint School District No.,,, (and) Counties, State of Idaho.

Each school district which, on the effective date of this act, is maintaining only an elementary school, or elementary schools, shall be designated after the following style:

Elementary School District No., County, State of Idaho, or Joint Elementary School District No.,,, (and) Counties, State of Idaho.

Joint districts shall be designated by the same number in each county in which the district lies, or shall lie.

Wherever the term "school district" appears in this act, it shall mean and include any school district, joint school district, elementary school district, joint elementary school district or specially chartered school district, unless

a more limited meaning is clearly expressed and intended, or unless any provision of a charter is contrary thereto. [1963, ch. 13, § 35, p. 27.]

STATUTORY NOTES

Compiler's Notes. — The term "this act", as used in this section, refers to S.L. 1963, Chapter 13, which is codified throughout Title 33. The effective date of S.L. 1963, Chapter 13 was July 21, 1963.

33-306. Boundaries of school districts. — There shall be no part of the area of the state of Idaho not included in the area of some school district.

A legal description of the boundaries of each school district, as now or hereafter established, shall be kept by the state board of education and by the board of county commissioners in each county in which any school district, or any part thereof, shall lie. [1963, ch. 13, § 36, p. 27.]

33-307. Correcting or altering school district boundaries. —

(1) Whenever the state board of education shall find that, because of error in the legal description of the boundaries of any school district, or for any other reason,

(a) any part of the area of the state is not included within the area of a school district, or

(b) is included in more than one (1) school district, or

(c) that any area of less than fifty (50) square miles in which no school is operated should be excised from the school district in which it lies and annexed to a contiguous school district when the interests of the school children residing in each of the affected districts of such areas will be served thereby,

the said state board of education shall make an appropriate order including an omitted area into any school district, or districts, or correcting or altering the boundaries of the districts, in such manner as, in its judgment, is just and proper.

(2) A copy of any such order shall be sent by the state board of education to the board of trustees of any school district affected by the order, and to the board of county commissioners of any county in which any such district, or part thereof, shall lie. Within thirty (30) days of receipt of the order, the board of county commissioners shall correct the legal description of the school district or districts, as the same may appear in its records, and immediately thereafter shall notify the state board of education that the county records have been corrected in accordance with the order of the said state board of education. The state tax commission shall also be notified in accordance with the provisions of section 63-215, Idaho Code. The proposal shall become effective at the same time the state board of education and the state tax commission have been notified by the county commissioners that the county records have been corrected as ordered. [1963, ch. 13, § 37, p. 27; am. 1973, ch. 9, § 1, p. 21; am. 1980, ch. 38, § 1, p. 65; am. 1998, ch. 244, § 1, p. 803.]

STATUTORY NOTES

Cross References. — Foundation program, effect upon, § 33-1003.

ch. 244 declared an emergency. Approved March 20, 1998.

Effective Dates. — Section 3 of S.L. 1998,

33-308. Excision and annexation of territory. — (1) A board of trustees of any school district including a specially chartered school district, or one-fourth (1/4) or more of the school district electors, residing in an area of not more than fifty (50) square miles within which there is no schoolhouse or facility necessary for the operation of a school district, may petition in writing proposing the annexation of the area to another and contiguous school district.

(2) Such petition shall be in duplicate, one (1) copy of which shall be presented to the board of trustees of the district from which the area is proposed to be excised, and the other to the board of trustees of the district to which the area is proposed to be annexed. The petition shall contain:

- (a) The names and addresses of the petitioners;
- (b) A legal description of the area proposed to be excised from one district and annexed to another contiguous district;
- (c) Maps showing the boundaries of the districts as they presently appear and as they would appear should the excision and annexation be approved;
- (d) The names of the school districts from and to which the area is proposed to be excised, and annexed;
- (e) A description of reasons for which the petition is being submitted; and
- (f) An estimate of the number of children residing in the area described in the petition.

(3) The board of trustees of each school district, no later than ten (10) days after its first regular meeting held subsequent to receipt of the petition, shall transmit the petition, with recommendations, to the state board of education.

(4) The state board of education shall approve the proposal provided:

(a) The excision and annexation is in the best interests of the children residing in the area described in the petition; and

(b) The excision of the territory, as proposed, would not leave a school district with a bonded debt in excess of the limit then prescribed by law.

If either condition is not met, the state board shall disapprove the proposal. The approval or disapproval shall be expressed in writing to the board of trustees of each school district named in the petition.

(5) If the state board of education shall approve the proposal, it shall be submitted to the school district electors residing in the area described in the petition, at an election held in the manner provided in chapter 4, title 33, Idaho Code. Such election shall be held within sixty (60) days after the state board approves the proposal.

(6) At the election there shall be submitted to the electors having the qualifications of electors in a school district bond election and residing in the area proposed to be annexed:

(a) The question of whether the area described in the petition shall be excised from school district no. () and annexed to contiguous school district no. (); and

(b) The question of assumption of the appropriate proportion of any bonded debt, and the interest thereon, of the proposed annexing school district.

(7) If a majority of the school district electors in the area described in the petition, voting in the election, shall vote in favor of the proposal to excise and annex the said area, and if in the area the electors voting on the question of the assumption of bonded debt and interest have approved such assumption by the proportion of votes cast as is required by section 3, article VIII, of the constitution of the state of Idaho, the proposal shall carry and be approved. Otherwise, it shall fail.

(8) If the proposal shall be approved by the electors in the manner prescribed, the state board of education shall make an appropriate order for the boundaries of the affected school districts to be altered; and the legal descriptions of the school districts shall be corrected as prescribed in section 33-307(2), Idaho Code. [1963, ch. 13, § 38, p. 27; am. 1998, ch. 244, § 2, p. 803.]

STATUTORY NOTES

Cross References. — Consolidation of contiguous districts, § 33-310A.

Foundation program, effect upon, § 33-1003.

School elections, §§ 33-401 — 33-406.

Effective Dates. — Section 3 of S.L. 1998, ch. 244 declared an emergency. Approved March 20, 1998.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Division of school districts.
Notice to residents.

Division of School Districts.

County commissioners had no authority under the former law providing for the counting and certification of election returns to change boundaries of or divide independent school districts. *Wood v. Independent School Dist. No. 2*, 21 Idaho 734, 124 P. 780 (1912).

Under the former law providing for the segregation of component districts petition and facts upon which it was presented should have been heard by board of commissioners and by them passed upon. *Gaiser v. Steele*, 25 Idaho 412, 137 P. 889 (1914).

Where board of county commissioners had consolidated two school districts, a succeeding board could divide same; where district had been organized by order of county commissioners, future board had authority to change boundaries or divide same. *Clay v. Board of County Comm'rs*, 30 Idaho 794, 168 P. 667 (1917).

Petition for creation of school district by division of district had to be signed by two-thirds of those who were heads of families and residents in the district. *Wheeler v. Board of County Comm'rs*, 31 Idaho 766, 176 P. 566 (1918).

Provisions of the former law providing for the segregation of component districts did not prohibit appeal from order of board of county commissioners for the segregation of school district from rural high school district. *Rural High School Dist. No. 1 v. School Dist. No. 37*, 32 Idaho 325, 182 P. 859 (1919).

Petition filed with board of county commissioners for segregation of school district from rural high school district did not have to be drawn with formal accuracy required of pleading in judicial proceeding. *In re Segregation of School Dist. No. 58*, 34 Idaho 222, 200 P. 138 (1921).

Board of county commissioners could segre-

gate regularly organized common school district from rural high school district, although rural high school district was composed of only two common school districts. *Olmstead v. Carter*, 34 Idaho 276, 200 P. 134 (1921).

In order to confer jurisdiction upon board of commissioners, it was necessary that petition and map be filed as provided by the former statute. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

school districts in voting their approval of a plan for reorganization were charged with knowledge of the discretionary power vested in the school trustees by the statutes to make such changes in the operation of the district and the place of attendance of the children of its various areas as changing conditions might warrant or require. *Hay v. Class B School Dist. No. 42*, 84 Idaho 501, 373 P.2d 922 (1962).

Notice to Residents.

The residents of the previously existing

33-309. Lapsed districts — Annexation. — If the state board of education shall find any school district

- a. has not operated its school for a period of one (1) school year, or
- b. in which the average daily attendance during each term of not less than seven (7) months in the two (2) school years last past has been less than five (5) pupils, or
- c. for a period of not less than one (1) year last past has had an insufficient number of members on its board of trustees lawfully to conduct the business of the district,

the said state board of education shall enter its order declaring any such district to be lapsed, and which district shall lapse as of the first day of July next following the date of said order.

The state board of education shall thereupon designate some proper person a hearing officer to conduct a public hearing or hearings on the matter of annexing the lapsed district to a school district or districts contiguous thereto. The state board of education shall cause notice of such hearing or hearings to be published in a newspaper of general circulation in the area and the notice shall state the time and place of the hearing or hearings and the subject matter involved.

Upon concluding any hearing or hearings the hearing officer shall make his report and recommendation to the state board of education, and the said state board shall thereafter order the lapsed area annexed to such contiguous district or districts as in the judgment of the said state board seems equitable and just. Any such annexation shall be effective as of the fifteenth day of August next following the date of the order of annexation.

Whenever there is any outstanding unpaid bonded debt owed by the lapsed district, the state board of education shall, in its order of annexation, require the district, or one (1) of the districts, to which the lapsed area is annexed, to keep and maintain the bond register and to pay the principal and interest, when the same are due, out of the proceeds of any levy made for that purpose. The said order of annexation shall also provide for the transfer, or apportionment, to the annexing district or districts of the property and current liabilities of the lapsed district as in the judgment of the state board of education is equitable and just; provided, however, that if the lapsed district shall have excess of liquid assets over current liabilities, and if such lapsed district shall have any outstanding unpaid bonded debt, then and in that event such excess shall be ordered transferred to a fund for the payment of the principal of and interest on such debt.

When annexation has been completed, as hereinabove authorized, the state board of education shall give notice of such annexation to the officers of the lapsed district, if any there be, and to the board of county commissioners of any county in which shall lie any district, the boundaries of which have been changed by the annexation of the lapsed area. The notice to any board of county commissioners shall be accompanied by a legal description of the boundaries of the district or districts as changed by the annexation. [1963, ch. 13, § 39, p. 27.]

STATUTORY NOTES

Cross References. — Foundation program, effect upon, § 33-1003.

33-310. Consolidation of school districts. — The boards of trustees of two (2) or more contiguous school districts may submit to the state board of education a plan for the consolidation of their districts into a single new district.

The plan shall contain as a minimum the following, and in addition any other information required by the state board of education:

(1) A map or maps showing the boundaries of the proposed new district, the boundaries of the component consolidating districts, the location of existing schoolhouses or other facilities of the component districts, the proposed trustee zones, and the proposed transportation routes if any;

(2) A legal description of the boundaries of the proposed new school district and of the trustee zones proposed, with estimates of the population in each such zone;

(3) The assessed value of taxable property of each component consolidating district and of the entire proposed new district;

(4) Outstanding general obligation bonds of any component consolidating district, sinking funds accumulated, and estimated proceeds of sinking fund levies in process of collection;

(5) Whether any component district has established a plant facilities reserve fund, and if so the amount on hand in such fund, the obligations against the fund, and the levy being made for such fund together with estimate of the proceeds of such levy in process of collection;

(6) The amount of any outstanding and unpaid bonds that will become the obligation of the subdistricts, pursuant to section 33-311, Idaho Code, after the application of any plant facility reserve funds, pursuant to section 33-901, Idaho Code. The plan shall also show for each subdistrict the estimated amount of state subsidies to be received, the estimated bond levy rate and the year in which the last levy will be made;

(7) If a joint district, the designation of the home county;

(8) The official name and number of the proposed new district; and

(9) How the property, real and personal, of former districts shall vest in the new district.

Before submitting any proposal for consolidating school districts to the state board of education, the board of trustees of each proposing district shall first call and cause to be held, within said district, a hearing on the

proposal. Notice of the time and place of such hearing shall be given, by each such district, by two (2) publications in a newspaper of general circulation in the district, the first and last publications being not less than six (6) days apart.

At such hearings, any school district elector or taxpayer of the district may appear and be heard, and may request any information from the board of trustees, concerning the proposed consolidation. Records of the hearings shall be entered in the minutes of each board of trustees and shall be included with the plan of proposed consolidation if and when it is submitted to the state board of education.

Following any hearing, it shall be within the discretion of the board of trustees of any proposing district whether it shall further proceed in the plan for consolidating the districts. [1963, ch. 13, § 40, p. 27; am. 2007, ch. 79, § 1, p. 209.]

STATUTORY NOTES

Cross References. — Foundation programs, effect upon, § 33-1003.

Amendments. — The 2007 amendment, by ch. 79, rewrote subsection (6), which formerly read: "Whether any outstanding and unpaid bonds of any district included in the proposal are to be and become the obligations of the proposed consolidated district, or shall remain the obligations of the area of the district which first incurred the same. If such bonds are proposed to become the obligations of the proposed consolidated district, the plan

shall show each participating district's portion thereof which shall be that portion of the aggregate debt as the assessed value of taxable property in each district bears to the aggregate assessed value of taxable property in the area of the proposed consolidated district."

Effective Dates. — Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Effect of consolidation.

In general.

Jurisdiction.

Manner of reorganization.

Rural high school districts.

Effect of Consolidation.

District formed by union of existing districts did not occupy different position after consolidation from district created from unorganized territory. *Clay v. Board of County Comm'rs*, 30 Idaho 794, 168 P. 667 (1917).

In General.

Former law providing that the county superintendent give notice of a filing of a petition to alter a school district boundary did not require recommendation of county superintendent to be in writing. *Clay v. Board of County Comm'rs*, 30 Idaho 794, 168 P. 667 (1917).

Jurisdiction.

Filing of petition conferred jurisdiction on board of commissioners and erroneous action thereon did not disturb such jurisdiction. *Sizemore v. Board of County Comm'rs*, 36 Idaho 184, 210 P. 137 (1922).

In order to confer jurisdiction upon the board of commissioners it was necessary that notice be given in accordance with the former statute. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

Manner of Reorganization.

A plan for reorganization of a school district could not be approved where it was gerrymandered.

dered in a prejudicial manner or merely for the purpose of including the places of residence of persons desiring to be included and of excluding those of persons desiring to be left out. *In re Gooding County Comm'rs*, 77 Idaho 505, 295 P.2d 695 (1956).

Rural High School Districts.

There were two jurisdictional requisites for

the creation of rural high school districts; first, filing with board of county commissioners the requisite petition, and second, submission of the question to a vote of electors. If majority of votes cast at such election were in favor of creating district, district was thereby created. *Pickett v. Board of County Comm'rs*, 24 Idaho 200, 133 P. 112 (1913).

33-310A. Consolidation of contiguous school districts. — In addition to the procedure contained in section 33-310, Idaho Code:

A. five per cent (5%) or more of the registered voters from each of two (2) or more contiguous school districts, when such districts coincide with election precincts, or,

B. a number of registered voters equal to fifteen per cent (15%) or more of the aggregate number of votes cast at the last three (3) elections for school trustees in each of the school districts, may petition in writing proposing the consolidation of their districts into a single new district. One (1) copy of such petition shall be presented to the board of trustees of each district included in the proposed consolidation. The petition shall contain:

1. The names and addresses of the petitioners;
2. A map or maps showing the boundaries of the proposed new district, the boundaries of the component consolidating districts, the location of existing schoolhouses or other facilities of the component districts, the proposed trustee zones, and the proposed transportation routes, if any.

When the petitions are received by the boards of trustees, the provisions of section 33-310, Idaho Code, shall become mandatory upon the boards so affected. The petitioners shall have the right to cooperate in the formulation of the proposed consolidated school district with the board of trustees of each school district affected thereby. The provisions of section 33-310, Idaho Code, shall be complied with and the proposed consolidation together with the testimony given at the public hearings shall be submitted to the state board of education within three (3) months after the first meeting of the combined boards and the petitioners. The first meeting of the combined boards and the petitioners shall be within fifteen (15) days after the petitions are submitted by the petitioners. [I.C., § 33-310A, as added by 1970, ch. 86, § 1, p. 210.]

STATUTORY NOTES

Cross References. — Excision and annexation of territory, § 33-308.

School elections, § 33-401 et seq.

33-310B. Feasibility study and plan for consolidation. — All school districts operating one (1) or more high schools may conduct a feasibility study and prepare a plan for school consolidation, which may also include school district consolidation. The cost of such feasibility studies and plans shall be reimbursed at an amount not to exceed ten thousand dollars (\$10,000) per each school district that proposes to consolidate, in accordance

with rules promulgated by the state board of education. The state board of education shall review and act upon all plans for school consolidation. [I.C., § 33-310B, as added by 1989, ch. 296, § 1, p. 724; am. 1998, ch. 88, § 3, p. 298; am. 2007, ch. 79, § 2, p. 209.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 79, in the second sentence, inserted “and plans,” and substituted “per each school district that proposes to consolidate” for “per study.”

Effective Dates. — Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

33-311. Plan of consolidation submitted to electors. — The state board of education may approve or disapprove any plan proposing consolidation, and if it approves the same it shall give notice thereof to the board of trustees of each school district proposing to consolidate and to the board of county commissioners in each county in which the proposed consolidated district would lie. Notice to the board of county commissioners shall include the legal description of the boundaries of the proposed consolidated district and a brief statement of the approved proposal, and shall be accompanied by a map of the proposed consolidated district.

Not more than ten (10) days after receiving the notice from the state board of education, each board of county commissioners receiving such notice shall enter the order calling for an election on the question of approving or disapproving, and shall cause notice of such election to be posted and published. The notice shall be posted and published, the election shall be held and conducted and its results canvassed, in the manner and form of sections 33-401 through 33-406, Idaho Code.

If the qualified school electors of any one (1) district proposing to consolidate, and voting in the election, shall constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the proposed consolidation shall not be approved unless a majority of such electors in such district, voting in the election, and a majority of such electors in each of the remaining districts, voting in the election, shall approve the proposed consolidation.

If the qualified school electors in no one (1) of the districts proposing to consolidate, and voting in the election, constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the proposed consolidation shall not be approved unless a majority of all such electors in each district, voting in the election, shall approve the proposed consolidation.

In any plan of consolidation the existing bonded debt of any district or districts proposing to consolidate, shall not become the obligation of the proposed consolidated school district. The debt or debts shall remain an obligation of the property within the districts proposing the consolidation. Upon voter approval of the proposed consolidation, the districts proposing to consolidate shall become subdistricts of the new district as if they had been created under the provisions of section 33-351, Idaho Code. The subdistricts shall be called bond redemption subdistricts. The powers and duties of such

bond redemption subdistricts shall not include authority to incur new indebtedness within the subdistricts.

When a consolidation is approved, as hereinabove prescribed, a new school district is thereby created, and the board of county commissioners of any county in which the consolidated district lies shall enter its order showing the creation of the district and a legal description of its boundaries. [1963, ch. 13, § 41, p. 27; am. 1985, ch. 237, § 1, p. 562; am. 1989, ch. 296, § 2, p. 724.]

STATUTORY NOTES

Cross References. — School elections, § 33-401 et seq.

Compiler's Notes. — Sections 33-401 through 33-406, referred to in the second paragraph of this section, were amended and

redesignated as §§ 33-402, 33-403, 33-404, 33-405, 33-406, and 33-407, respectively. The reference should now be to chapter 4, title 33, Idaho Code.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Apportionment of indebtedness.

Organization of independent school.

Propositions voted on.

"Territory affected" construed.

Writ of prohibition.

Apportionment of Indebtedness.

Apportionment by county superintendent of indebtedness as between newly-created and old districts was not prerequisite to validity of organization of new district. *School Dist. No. 15 v. Blaine County*, 26 Idaho 285, 142 P. 41 (1914).

Organization of Independent School.

Upon organization of independent school district embracing territory formerly occupied by common school district, former was bound to assume and discharge all debts, obligations, and duties belonging to or devolving on old district. *Boise City Nat'l Bank v. Independent Sch. Dist. No. 40*, 33 Idaho 26, 189 P. 47 (1920).

Propositions Voted On.

The voters of the entire district were entitled to vote on any proposition or plan propos-

ing to take away portions of the district for consolidation with another district. In re *Gooding County Comm'rs*, 77 Idaho 505, 295 P.2d 695 (1956).

"Territory Affected" Construed.

The words "territory affected" meant the whole of the district from which a part was sought to be taken. In re *Gooding County Comm'rs*, 77 Idaho 505, 295 P.2d 695 (1956).

Writ of Prohibition.

Writ of prohibition could not be issued to prevent county commissioners from issuing an order authorizing an election to consider proposed plan of reorganization of school districts, since petitioners were entitled to appeal from order of county commissioners. *Common Sch. Dist. No. 58 v. Lunden*, 71 Idaho 486, 233 P.2d 806 (1951).

33-312. Division of school district. — A school district may be divided so as to form not more than two (2) districts each of which must have continuous boundaries, in the manner hereinafter provided, except that any district which operates and maintains a secondary school or schools shall not be divided unless the two (2) districts created out of the division shall each operate and maintain a secondary school or schools immediately following such division.

A proposal to divide a school district may be initiated by its board of trustees and submitted to the state board of education. Such proposal shall contain all of the information required in a proposal to consolidate school districts as may be relevant to a proposal to divide a school district. It shall also show the manner in which it is proposed to divide or apportion the property and liabilities of the district, the names and numbers of the proposed new districts, and legal description of the proposed trustee zones.

Before submitting any proposal to divide a school district, the board of trustees shall hold a hearing or hearings on the proposal within the district. Notice of such hearing or hearings shall be posted by the clerk of the board of trustees in not less than three (3) public places within the district, one (1) of which places shall be at or near the main door of the administrative offices of the school district, for not less than ten (10) days before the date of such hearing or hearings.

The state board of education may approve or disapprove any such proposal submitted to it, and shall give notice thereof in the manner of a proposal to consolidate school districts; except, that the state board of education shall not approve any proposal which would result in a district to be created by the division having or assuming a bonded debt in an amount exceeding the limitations imposed by law, or which would leave the area of any city or village in more than one school district.

If the state board of education shall approve the proposal to divide the district, notice of the election shall be published, the election shall be held and conducted, and the ballots shall be canvassed, according to the provisions of sections 33-401 — 33-406. The division shall be approved only if a majority of all votes cast at said special election by the school district electors residing within the entire existing school district and voting in the election are in favor of the division of such district, and a majority of all votes cast at said special election by the qualified voters within that portion of the proposed new district having a minority of the number of qualified voters, such portion to be determined by the number of votes cast in each area which is a contemplated new district, are in favor of the division of the district, and upon such approval two (2) new school districts shall be thereby created. The organization and division of all school districts which have divided since June 30, 1963, are hereby validated.

If the division be approved, as herein provided, the board of canvassers shall thereupon notify the state board of education and the trustees of the district which has been divided. The state board shall give notice to the board of county commissioners of any county in which the newly created districts may lie. [1963, ch. 13, § 42, p. 27; am. 1963, ch. 175, § 1, p. 501; am. 1965, ch. 272, § 1, p. 699; am. 1969, ch. 152, § 1, p. 478.]

STATUTORY NOTES

Cross References. — Foundation program, effect upon, § 33-1003.

School elections, § 33-401 et seq.

Compiler's Notes. — Sections 33-401 through 33-406, referred to in the fifth para-

graph of this section, were amended and redesignated as §§ 33-402, 33-403, 33-404, 33-405, 33-406, and 33-407, respectively. The reference should now be to chapter 4, title 33, Idaho Code.

Effective Dates. — Section 2 of S.L. 1965, ch. 272 declared an emergency. Approved March 29, 1965. Section 2 of S.L. 1969, ch. 152 declared an emergency. Approved March 14, 1969.

33-313. Trustee zones. — (1) Each elementary school district shall be divided into three (3) trustee zones and each other school district shall be divided into no fewer than five (5) nor more than nine (9) trustee zones according to the provisions of section 33-501, Idaho Code. A school district that has had a change in its district boundaries because of consolidation on and after January 1, 2008, shall divide trustee zones so that each former district in the new district shall not be split into different trustee zones, unless the provisions of subsection (2) of this section cannot be satisfied.

(2) Any proposal to define the boundaries of the several trustee zones in each such school district shall include the determination, where appropriate, of the number of trustee zones in such district, and the date of expiration of the term of office for each trustee. The boundaries of the several trustee zones in each such school district shall be defined and drawn so that, as reasonably as may be, each such zone shall have approximately the same population.

(3) Whenever the area of any district has been enlarged by the annexation of all or any part of another district, or by the correction of errors in the legal description of school district boundaries, any such additional territory shall be included in the trustee zone or zones contiguous to such additional territory until such time as the trustee zones may be redefined and changed. Trustee zones may be redefined and changed, but not more than once every five (5) years in the manner hereinafter provided.

(4) A proposal to redefine and change trustee zones of any district may be initiated by its board of trustees and shall be initiated by its board of trustees at the first meeting following the report of the decennial census, and submitted to the state board of education, or by petition signed by not less than fifty (50) school electors residing in the district, and presented to the board of trustees of the district. Within one hundred twenty (120) days following the decennial census or the receipt of a petition to redefine and change the trustee zones of a district the board of trustees shall prepare a proposal for a change which will equalize the population in each zone in the district and shall submit the proposal to the state board of education. Any proposal shall include a legal description of each trustee zone as the same would appear as proposed, a map of the district showing how each trustee zone would then appear, and the approximate population each would then have, should the proposal to change any trustee zones become effective.

(5) Within sixty (60) days after it has received the said proposal the state board of education may approve or disapprove the proposal to redefine and change trustee zones and shall give notice thereof in writing to the board of trustees of the district wherein the change is proposed. Should the state board of education disapprove a proposal the board of trustees shall within forty-five (45) days submit a revised proposal to the state board of education. Should the state board of education approve the proposal, the trustee zones shall be changed in accordance with the proposal.

(6) At the next regular meeting of the board of trustees following the approval of the proposal the board shall appoint from its membership a

trustee for each new zone to serve as trustee until that incumbent trustee's three (3) year term expires. If the current board membership includes two (2) incumbent trustees from the same new trustee zone, the board will select the incumbent trustee with the most seniority as a trustee to serve the remainder of his three (3) year term. If both incumbent trustees have equal seniority, the board will choose one (1) of the trustees by the drawing of lots. If there is a trustee vacancy in any of the new zones, the board of trustees shall appoint from the patrons resident in that new trustee zone, a person from that zone to serve as trustee until the next annual meeting. At the annual election a trustee shall be elected to serve during the term specified in the election for the zone. The elected trustee shall assume office at the annual meeting of the school district next following the election. [1963, ch. 13, § 43, p. 27; am. 1967, ch. 403, § 1, p. 1214; am. 1969, ch. 412, § 1, p. 1143; am. 1973, ch. 125, § 1, p. 236; am. 1979, ch. 271, § 1, p. 705; am. 1984, ch. 94, § 1, p. 218; am. 1989, ch. 121, § 1, p. 267; am. 1990, ch. 31, § 1, p. 46; am. 1994, ch. 182, § 1, p. 599; am. 2001, ch. 163, § 1, p. 572; am. 2008, ch. 351, § 1, p. 968.]

STATUTORY NOTES

Cross References. — School elections, § 33-401 et seq.

Amendments. — The 2008 amendment, by ch. 351, added the subsection designations; and added the last sentence in subsection (1).

Effective Dates. — Section 2 of S.L. 1979,

ch. 271 declared an emergency. Approved March 30, 1979.

Section 3 of S.L. 1984, ch. 94 declared an emergency. Approved March 28, 1984.

Section 2 of S.L. 2001, ch. 163 declared an emergency. Approved March 23, 2001.

33-314. Appeal from order of state board of education. — Any order of the state board of education affecting the organization, consolidation, division, annexation, excision, or change in boundaries of any school district, or districts, may be appealed to the district court of any county in which the district, or proposed district, lies or shall lie. Appeal may be taken by any school elector residing in the area affected by the order, or by any taxpayer on property situate in said area, and shall be tried de novo.

The pleadings and other papers shall be filed not more than sixty (60) days after notice of the order appealed, and service of two (2) copies thereof shall be made upon the state superintendent of public instruction. [1963, ch. 13, § 44, p. 27.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeal or writ of error.
Best interests.
Jurisdiction.

Questions subject to review.

Trial de novo.

Writ of prohibition.

Appeal or Writ of Error.

Where an appeal was provided for from an order from the state board of education, an appeal being an adequate remedy, a writ of error could not be had. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

When the legislature provided for an "appeal" from any order of the state board of education, the Supreme Court could not hold that it intended to say "writ of review," such appeal involving a petition to detach an area from one school district and join it to another. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Best Interests.

The court properly concluded that the best interests of the students of the Big Butte Area would be served by making the change sought in the petition by the qualified electors and residents of an area to separate their area from one school district and join such area to another, such area sought to be joined to being the natural trade district for residents and more accessible for high school students. Further, it would work no unnecessary financial hardship on the district losing the area. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Jurisdiction.

The phraseology directing an appeal from an order of the state board of education under the phraseology "appeal therefrom to a court of competent jurisdiction," employed in the Constitution can mean none other than that the district court is such a court. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Questions Subject to Review.

A trial court in reviewing proceedings of the county commissioners could determine

among other things questions of jurisdiction, compliance with the law, abuse of statutory power, and a redetermination upon any question of adjustment of property, debts, and liabilities among the districts involved. In re Gooding County Comm'rs, 77 Idaho 505, 295 P.2d 695 (1956).

The trial court in reviewing proceedings of county commissioners relative to plan for organization of a school district could not redefine or reestablish the boundaries of the district as prepared and voted on. In re Gooding County Comm'rs, 77 Idaho 505, 295 P.2d 695 (1956).

Trial de Novo.

Right of appeal from order of county commissioners under Reorganization Act, included the right of a trial de novo. *Common Sch. Dist. No. 58 v. Lunden*, 71 Idaho 486, 233 P.2d 806 (1951).

The district court did not err in construing the statutory provision for appeal as authorizing a trial de novo where petition of residents of area had had their petition to detach their area from one school district and join it to another denied by order of the state board of education. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Writ of Prohibition.

Writ of prohibition could not be issued to prevent county commissioners from issuing an order authorizing an election to consider proposed plan of reorganization of school districts, since petitioners were entitled to appeal from order of county commissioners. *Common Sch. Dist. No. 58 v. Lunden*, 71 Idaho 486, 233 P.2d 806 (1951).

33-315. Cooperative educational services — Legislative intent declared. — The legislature of the state of Idaho hereby declares its intent to encourage school districts to cooperatively provide those educational services which they are unable to offer singly or which can be provided more economically and/or more efficiently in combination with other districts. [1967, ch. 362, § 1, p. 1042.]

33-316. Cooperative contract to employ specialized personnel and/or purchase materials. — The trustees of two (2) or more school districts may cooperatively enter into written contract to employ specialized personnel and/or purchase materials which in the judgment of the contracting school districts are necessary or desirable for the conduct of the business of the school districts. [1967, ch. 362, § 2, p. 1042.]

33-317. Cooperative service agency — Powers — Duties — Limitations. — (1) Two (2) or more school districts may join together for educational purposes to form a service agency to purchase materials and/or provide services for use individually or in combination. The cooperative service agency thus formed shall be empowered to adopt bylaws, and act as a body corporate and politic with such powers as are assigned through its bylaws but limited to the powers and duties of local school districts. In its corporate capacity, this agency may sue and be sued and may acquire, hold and convey real and personal property necessary to its existence. The employees of the service agency shall be extended the same general rights, privileges and responsibilities as comparable employees of a school district.

(2) A properly constituted cooperative service agency may request from its member school districts funding to be furnished by a tax levy not to exceed one-tenth of one percent (.1%) for a period not to exceed ten (10) years by such member school districts. Such levy must be authorized by an election held in each of the school districts pursuant to chapter 4, title 33, Idaho Code, and approved by a majority of the district electors voting in such election. Moneys received by the member school districts from this source shall be transferred to the cooperative service agency upon receipt of billing from the agency. Excess revenue over billing must be kept in a designated account by the district, with accrued interest, and may only be spent as budgeted by the agency.

(3) For the purpose of constructing and maintaining facilities of a cooperative service agency, in addition to the levy authorized in subsection (2) of this section, a properly constituted cooperative service agency may request from its member school districts additional funding to be furnished by a tax levy not to exceed one-tenth of one percent (.1%) for a period not to exceed ten (10) years. Such levy must be authorized by an election held in each of the school districts pursuant to chapter 4, title 33, Idaho Code, and approved by sixty-six and two-thirds percent (66 2/3%) of the district electors voting in such election. If one (1) or more of the member districts fails to approve the tax levy in such election, the cooperative service agency may construct the facility through the support of the member districts approving the levy, but in no event shall the levy limits authorized in this subsection (3) be exceeded. Nothing shall prevent a member district that initially failed to approve the levy from conducting a subsequent election, held pursuant to chapter 4, title 33, Idaho Code, to authorize that district's participation in construction of the facility. Electors of the districts may approve continuation of such levy for an additional ten (10) years at an election held for that purpose. There is no limit on the number of elections which may be held for the purpose of continuing the levy authorized under this subsection (3) for an additional ten (10) years. The administration and accounting of moneys received by imposition of the levy shall be the same as provided in subsection (2) of this section. [1967, ch. 362, § 3, p. 1042; am. 1972, ch. 105, § 1, p. 216; am. 1985, ch. 107, § 2, p. 191; am. 1989, ch. 17, § 1, p. 19; am. 1991, ch. 111, § 1, p. 238; am. 2006, ch. 306, § 1, p. 945; am. 2008, ch. 104, § 1, p. 287.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 306, added subsection (3).

The 2008 amendment, by ch. 104, added the third and fourth sentences in subsection (3).

Effective Dates. — Section 2 of S.L. 2008, ch. 104 declared an emergency. Approved March 14, 2008.

33-318. Fair share of expenses — Appropriation from school district funds. — For the services and materials received from a cooperative service agency, boards of trustees may appropriate from school district funds and pay to the service agency an amount determined by the governing body of the agency to be their fair share of the expenses involved. [1967, ch. 362, § 4, p. 1042.]

33-319 — 33-350. [Reserved.]

33-351. Subdistricts — Authority to establish — Election. — The board of trustees of any school district which operates two (2) or more high schools may at any time, on its own motion or upon the filing with the board of trustees of a petition so requesting signed by not less than fifty (50) school electors, call an election to submit to the qualified electors of the school district the question of the creation of one or more school subdistricts. Such election shall be called, held and conducted pursuant to the provisions of chapter 4, title 33, Idaho Code. The proceedings calling such election shall set forth the boundaries of each proposed school subdistrict and shall provide for the submission of the question of the creation of each such school subdistrict to the qualified electors of the school district and to the qualified electors residing within the proposed boundaries of each such school subdistrict. No proposition for the creation of a school subdistrict shall be determined to have carried unless such proposition shall receive a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the school district and a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the proposed school subdistrict. Whenever the creation of more than one (1) school subdistrict is submitted at the same election, separate ballots and separate propositions shall be used in voting on the question of creating each school subdistrict. [I.C., § 33-351, as added by 1986, ch. 61, § 1, p. 177.]

STATUTORY NOTES

Prior Laws. — Former sections 33-351 — §§ 1-5, p. 397, were repealed by S.L. 1979, ch. 33-555, which comprised S.L. 1971, ch. 116, 76, § 1.

33-352. Establishment. — Whenever a proposition for the creation of a school subdistrict shall have been approved in the manner set forth in section 33-351, Idaho Code, the board of trustees of the school district shall enter in its minutes an order providing for the establishment and creation of the school subdistrict setting forth therein the legal description of the boundaries thereof and shall designate therein a name for such school

subdistrict. Within ten (10) days after the entry of the order creating such school subdistrict, the board of trustees shall certify the fact of the creation of such school subdistrict to the state board of education and to the board of county commissioners of each county in which any part of the school subdistrict is located, by the filing of a certified copy of the order of the board of trustees creating and establishing the school subdistrict. [I.C., § 33-352, as added by 1986, ch. 61, § 1, p. 177.]

STATUTORY NOTES

Prior Laws. — Former § 33-352 was repealed. See Prior Laws, § 33-351.

33-353. Nature and powers. — Each school subdistrict created and established as provided in this act shall be a political subdivision of the state of Idaho. The board of trustees entering the order creating and establishing such school subdistrict shall be the governing body of all school subdistricts created by it, and shall possess the power to order, conduct and hold all elections in such school subdistricts for the purpose of incurring debt and issuing bonds and for the purpose of voting school plant facilities reserve fund levies. [I.C., § 33-353, as added by 1986, ch. 61, § 1, p. 177.]

STATUTORY NOTES

Prior Laws. — Former § 33-353 was repealed. See Prior Laws, § 33-351.

Compiler's Notes. — The term "this act",

used in the first sentence, refers to S.L. 1986, Chapter 61, which is codified as §§ 33-351 to 33-355.

33-354. Indebtedness — Bond issues. — School subdistricts may incur debt and issue bonds for the purpose of acquiring, purchasing or improving a school site or sites, acquiring or constructing new school houses, remodeling existing buildings, constructing additions thereto, including all necessary furnishings and equipment, and all lighting, heating, ventilation, sanitation facilities and appliances necessary to operate the buildings of the new school subdistrict. The governing body of a school subdistrict may submit to the qualified electors of the school subdistrict the question of whether the governing body of the school subdistrict shall be empowered to issue negotiable bonds of the school subdistrict in an amount and for a period of time to be named in the notice of election. Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed and the qualifications of electors voting or offering to vote shall be as provided in sections 33-402 through 33-423, Idaho Code. The question of the issuance of such bonds shall be approved only if the percentage of votes cast at such election were cast in favor thereof as that which is now, or may hereafter be, set by the constitution of the state of Idaho. All such bonds shall be authorized, issued and sold pursuant to the provisions of sections 33-1107 through 33-1125, Idaho Code. No bonds of a school subdistrict may be issued, however, if the issuance of such bonds would cause the percentage of market value for assessment purposes of taxable property within the boundaries of the school subdistrict represented

by the aggregate outstanding indebtedness of the school subdistrict, when added to the percentage of the assessed valuation of taxable property represented by the aggregate outstanding indebtedness of the school district within which the school subdistrict lies, to exceed five percent (5%). As used in the preceding sentence hereof, "market value for assessment purposes," "aggregate outstanding indebtedness" and "issuance" shall have the same meanings as set forth in section 33-1103, Idaho Code. Upon the approval of the issuance of such bonds, the same may be issued by the governing body of the school subdistrict on behalf of the school subdistrict at any time within two (2) years from the date of such election. Wherever in sections 33-402 through 33-423, Idaho Code, and in sections 33-1107 through 33-1125, Idaho Code, reference is made to "school district"; for purposes of this act it shall be deemed to refer to school subdistricts. [I.C., § 33-354, as added by 1986, ch. 61, § 1, p. 177.]

STATUTORY NOTES

Prior Laws. — Former § 33-354 was repealed. See Prior Laws, § 33-351. **Compiler's Notes.** — The term "this act", used in the first sentence, refers to S.L. 1986, Chapter 61, which is codified as §§ 33-351 to 33-355.

33-355. Levy for plant facilities reserve fund — Election. — The governing body of a school subdistrict may call an election in the school subdistrict, pursuant to the provisions of section 33-804, Idaho Code, for the purpose of submitting to the qualified school electors of the school subdistrict the question of a levy by a school subdistrict of a school plant facilities reserve fund tax. [I.C., § 33-355, as added by 1986, ch. 61, § 1, p. 177.]

STATUTORY NOTES

Cross References. — School plant facilities reserve fund, § 33-901. **Prior Laws.** — Former § 33-355 was repealed. See Prior Laws, § 33-351.

CHAPTER 4

SCHOOL ELECTIONS

| SECTION. | SECTION. |
|---|--|
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SECTION.

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 33-440. Enforcement provisions — Mandamus — Appeals.
 33-441. Violations by signers.
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 33-443. [Repealed.]

33-401. Legislative intent. — The legislature finds that a comprehensive and integrated statutory scheme for the conduct of school elections is critical to the public's understanding of and confidence in the public school election system. It is therefore the intent of the legislature that with the exception of chapter 24, title 34, Idaho Code, and the provisions of title 18, Idaho Code, which shall be fully applicable, or unless otherwise specifically provided, all school elections shall be governed by the provisions of this chapter. [I.C., § 33-401, as added by 1982, ch. 60, § 1, p. 106.]

STATUTORY NOTES

Cross References. — Election contests other than legislative and state executive offices, § 34-2001 et seq.
 Voters, § 34-401 et seq.

Compiler's Notes. — Former § 33-401 was amended and redesignated as § 33-402 by S.L. 1982, ch. 60, § 2.

33-402. Notice requirements. — a. Notice of all school elections must be given by posting and publishing notice of said elections and such notice shall state:

1. The date of holding the election;
2. The hours between which the polls will be open;
3. The definite place or places of holding the election;
4. In the case of election of trustees, the offices to be filled, the trustee zones, and a statement that declarations of candidacy must be filed not later than 5:00 p.m. on the fifth Friday prior to the day of the election;
5. In the case of bond election, the amount of the issue, the purpose and period of the issue;
6. In the case of the assumption of a debt, the amount of any such debt to be assumed by each district, or part of a district; and
7. In all other elections, a brief statement of the question being submitted to the electors.

b. In school elections involving (i) the incurring or increasing of a debt, (ii) approving a levy for a plant facilities reserve fund and term thereof, (iii) excising and annexing territory, (iv) consolidating districts, or (v) dividing a district, notice of the election shall be posted not less than twenty-one (21) days prior to the day of the election in at least three (3) places in each district participating in or affected by such election, one (1) of which places shall be at or near the main door of the administrative offices of each such

district, and by publishing at least once each week for three (3) consecutive weeks prior to the day of the election in a newspaper as provided in section 60-106, Idaho Code, published in the county or in any county in which such district may lie and having general circulation within such district.

c. Notice of all other school elections shall be given in the same manner, except that the posting shall be for not less than ten (10) days, and publishing shall be at least once each week for two (2) consecutive weeks prior to the day of the election.

d. Notice of the deadline for filing declaration of candidacy for election of trustees shall be posted for not less than ten (10) days and published at least once each week for two (2) consecutive weeks prior to the last day for filing nominating petitions as required by section 33-502, Idaho Code.

e. In elections for excising and annexing the territory of school districts, or to create new school districts by consolidation or division, the clerk of the board of county commissioners of the county in which the district lies, or of the home county if the district be a joint district, shall prepare, post, sign and arrange for the publishing of, the notice of election. In all other elections it shall be the duty of the clerk of the board of trustees so to do.

f. Notice of annual meeting of elementary school districts as provided for in section 33-510, Idaho Code, and of intent to discontinue a school, as provided for in section 33-511, Idaho Code, and annual budget hearing as provided for in section 33-801, Idaho Code, shall be given by posting and publishing as outlined in subsection b. of this section except that posting shall be for not less than ten (10) days, and publishing shall be once in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district.

g. Notices calling for bids for the acquisition, use, or disposal of real and personal property as provided for in section 33-601, Idaho Code, and contracting for transportation services as provided for in section 33-1510, Idaho Code, shall be given in a newspaper of general circulation as required by chapter 1, title 60, Idaho Code, except that the notice for contracting for transportation services shall be made not less than four (4) weeks before the date of opening bids.

h. Proof of posting notice shall be upon the affidavit of the person posting the same; and proof of publication shall be upon the affidavit of the publisher of the newspaper or newspapers respectively. Such affidavits shall be filed with his board by the clerk responsible for the posting and the publishing of said notice, before the day of the election named in the notice. [1963, ch. 13, § 45, p. 27; am. 1972, ch. 93, § 1, p. 203; am. 1978, ch. 65, § 1, p. 131; am. 1979, ch. 130, § 1, p. 401; am. and redesign. 1982, ch. 60, § 2, p. 106; am. 1985, ch. 235, § 1, p. 558; am. 1992, ch. 187, § 1, p. 581; am. 1997,

ch. 40, § 1, p. 74; am. 2005, ch. 213, § 4, p. 637; am. 2007, ch. 166, § 1, p. 494.]

STATUTORY NOTES

Cross References. — Publication requirements, § 60-109.

School plant facilities reserve fund, § 33-901.

Amendments. — The 2007 amendment, by ch. 166, in subsection (g), inserted "in a newspaper of general circulation," and substituted "chapter 1, title 60, Idaho Code" for

"chapter 28, title 67, Idaho Code."

Compiler's Notes. — This section was formerly compiled as § 33-401.

Former § 33-402 was amended and redesignated as § 33-403 by S.L. 1982, ch. 60, § 3.

Effective Dates. — Section 2 of S.L. 1972, ch. 93, declared an emergency. Approved March 6, 1972.

JUDICIAL DECISIONS

Notice.

The notice of election published by the school district for the purpose of giving notice of a supplemental levy satisfied the require-

ment of subdivision a.7. of this section. *Lind v. Rockland Sch. Dist.*, 120 Idaho 928, 821 P.2d 983 (1991).

DECISIONS UNDER PRIOR LAW

Requirements of Notice.

Requirement that notice state "purpose" of election meant general purpose for which money was to be used and not items of expenditure. *King v. Independent Sch. Dist. No. 37*, 46 Idaho 800, 272 P. 507 (1928).

Voter was entitled to know from notice what money was to be used for; but that was not made by former statute essential question for his consideration. *King v. Independent Sch. Dist. No. 37*, 46 Idaho 800, 272 P. 507 (1928).

33-403. Conduct of elections. — In all school elections each polling place shall be presided over by a board of election. Each board shall consist of one (1) or more judges and a clerk, who shall be qualified school district electors of the district. The board of election shall determine the time of duty of each judge and clerk as full time or part time on duty and require those who count the ballots to remain on duty until the ballots are counted. Before entering upon his duties, each member of the board of election shall take an oath, which shall be administered by any qualified school district elector of the district, faithfully to perform the duties of such member.

In any election involving excision and annexation of territory, or consolidation of districts, or division of a district, the board of county commissioners of any county affected by such election shall appoint the boards of election and designate the polling places within that county; and in all other school elections, the board of trustees of the district shall appoint the board or boards of election.

Polling places designated for school election shall conform to the accessibility standards established by the secretary of state pursuant to the authority granted in section 34-302, Idaho Code.

While the polls are open neither the board of election nor any person shall give information on the progress of the election. All elections shall be by secret and separate ballot, each ballot to be in print, type or other legible writing. The ballots in each case shall be prepared by the person responsible for signing, posting and arranging the publishing of the notice of election, and shall be in such form that an elector may express a choice in the

affirmative or in the negative of any proposition to be voted on or the election of any person, by marking a cross (X). Ballots shall carry a brief but clear statement of any proposition being submitted; and

1. In the case of an election involving the creation or assumption of debt, the amount of the issue, purpose and period of the issue, or the amount to be assumed;

2. In the case of election of trustees, the names of the nominees, together with space in which an elector may write in the name or names of other qualified persons;

3. In the case of an election involving excision and annexation of territory, or the consolidation of school districts, or the division of a school district, a description of the proposed change.

In all school elections, the ballots used by the electors shall be kept in a sealed container until the polls are closed at the time specified in the notice of election.

It is intended that no informalities in the conduct of school elections shall invalidate the same if the election shall have been otherwise fairly held. [1963, ch. 13, § 46, p. 27; am. and redesign. 1982, ch. 60, § 3, p. 106; am. 1985, ch. 115, § 1, p. 237; am. 1988, ch. 220, § 1, p. 418; am. 1991, ch. 53, § 1, p. 96.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-402.

Former § 33-403 was amended and redesignated as § 33-404 by S.L. 1982, ch. 60, § 7.

Effective Dates. — Section 2 of S.L. 1988, ch. 220 declared an emergency. Approved March 29, 1988.

33-403A. Assistance to voter. — a. If any elector is unable, due to physical disability or other handicap, to enter the polling place, he may be handed a ballot outside the polling place but within forty (40) feet thereof by one (1) of the election clerks, and in his presence but in a secret manner, mark and return the same to such election officer who shall proceed to deposit the ballot as provided by law.

b. If any elector, who is unable by reason of physical disability or other handicap to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice or by one (1) of the election clerks. Such clerk or selected person shall mark the ballot in the manner directed by the elector and fold it properly and present it to the elector before leaving the voting compartment or area provided for such purpose. The elector shall then present it to the judge of election who shall deposit the ballot as provided by law. [I.C., § 33-403A, as added by 1982, ch. 60, § 4, p. 106.]

33-403B. Spoiled ballots. — No person shall take or remove any ballot from the polling place. If an elector inadvertently or by mistake spoils a ballot, he shall return it folded to the distributing clerk, who shall give him another ballot. The ballot thus returned shall, without examination, be immediately cancelled by writing across the back, or outside of the ballot as folded, the words "spoiled ballot, another issued," and the spoiled ballot

shall be deposited in a box provided for that purpose. [I.C., § 33-403B, as added by 1982, ch. 60, § 5, p. 106.]

33-403C. Challengers — Watchers. — (1) The school district clerk shall, upon receipt of a written request to be received no later than five (5) days prior to the day of election, direct that the election judges permit one (1) person authorized by each candidate to be at the polling place for the purpose of challenging voters, and shall if requested, permit one (1) person authorized by any candidate to be present to serve as a watcher to observe the counting of votes. Challengers or watchers may work in various shifts throughout the day. However, each candidate may have only one (1) challenger and only one (1) watcher at the polling place at any given time.

(2) Where the issue before the electors of a school district is other than the election of officers, the clerk of the school district shall upon receipt of a written request, such request to be received no later than five (5) days prior to the date of voting on the issue or issues, direct that the election judges permit one (1) pro and one (1) con person to be at the polling place for the purpose of challenging voters and to serve as a watcher to observe the counting of votes. Such authorization shall be evidenced in writing signed by the requesting person and shall state which position relative to the issue or issues the person represents. Challengers or watchers may work in various shifts throughout the day. Persons who are authorized to serve as challengers or watchers shall wear a visible name tag which includes their respective titles. Challengers or watchers shall not be a candidate at the election where they are serving as a challenger or watcher. [I.C., § 33-403C, as added by 1982, ch. 60, § 6, p. 106; am. 2006, ch. 232, § 1, p. 689.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 232, redesignated the subsections; in subsection (1), substituted “one (1) person authorized by any candidate” for “any candidate,” and “serve as a watcher to observe the counting of votes” for “watch the receiving and counting of votes,” and added the last two sentences; and in subsection (2), in the first sentence, substituted “serve as a watcher to

observe the counting of votes” for “watch the receiving and counting of votes,” added the third sentence, and substituted the last sentence for “Persons permitted to be present to watch the counting of votes shall not absent themselves until the polls are closed.”

Effective Dates. — Section 3 of S.L. 2006, ch. 232 declared an emergency. Approved March 30, 2006.

33-404. Places elections to be held. — In elections involving excision and annexation of territory, or the consolidation of school districts, or the division of a school district, each notice of election shall designate that polling places shall be established, as follows:

In an election involving excision and annexation of territory, polling places shall be established in the district to which the territory or area is to be annexed; in the territory or area to be annexed; and in the remainder of the school district from which the territory or area is to be excised.

In an election involving consolidation of school districts, polling places shall be established in each district proposed to be consolidated.

In an election involving the division of a school district, polling places shall be established in each proposed trustee zone of each school district proposed to be created by the division.

In any school election held within a joint school district, polling places shall be designated and established, within such district, in each county in which ten (10) or more electors of the district reside. In an area where less than ten (10) electors reside, a polling place shall be designated upon petition to the board of trustees, received not less than twenty-eight (28) days preceding the date of the election, of three (3) or more electors within the affected area, or may be designated at the option of the board of trustees. [1963, ch. 13, § 47, p. 27; am. and redesi. 1982, ch. 60, § 7, p. 106; am. 1983, ch. 37, § 1, p. 88.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-403. Former § 33-404 was amended and redesignated as § 33-405 by S.L. 1982, ch. 60, § 8.

33-405. Qualifications of school electors. — Any person voting, or offering to vote, in any school election must be, at the time of the election eighteen (18) years of age and a United States citizen who has resided in this state and in the school district at least thirty (30) days next preceding the election in which the elector desires to vote. In the case of election of trustees, the elector must be a resident of the same trustee zone as the candidate or candidates for school district trustees for whom the elector offers to vote for at least thirty (30) days next preceding the election in which the elector desires to vote.

Registration requirements set forth in chapter 4, title 34, Idaho Code, shall be applicable to school elections, and in addition to the foregoing qualifications, a school elector shall have executed, in writing and immediately before voting, a form of elector's oath attesting that he or she possesses the qualifications of a school elector prescribed by this section and indicating the mailing address, residence address or any other necessary information definitely locating the residence of the school elector. The elector may be required to furnish to the election official proof of residence, which proof shall be established by either an Idaho motor vehicle driver's license or any other document definitely establishing the elector's residence within the school district or trustee zone. [1963, ch. 13, § 48, p. 27; am. 1969, ch. 177, § 1, p. 533; am. 1970, ch. 37, § 1, p. 81; am. 1970, ch. 136, § 1, p. 331; am. 1971, ch. 25, § 3, p. 61; am. and redesi. 1982, ch. 60, § 8, p. 106; am. 1985, ch. 257, § 1, p. 711; am. 1987, ch. 256, § 1, p. 519; am. 1989, ch. 88, § 67, p. 151.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-404.

Former § 33-405 was amended and redesignated as § 33-406 by S.L. 1982, ch. 60, § 11.

Effective Dates. — Section 9 of S.L. 1971,

ch. 25 declared an emergency. Approved February 16, 1971.

Section 5 of S.L. 1987, ch. 256 (approved April 1, 1987 at 9:45 AM) declared an emergency. However, such section was repealed by

§ 1 of S.L. 1987, ch. 252 (approved April 1, 1987 at 2:50 PM).

Section 70 of S.L. 1989, ch. 88 provided that the act would become effective April 1, 1990.

JUDICIAL DECISIONS

Decision Prior to 1971 Amendment.

While it is apparent that property qualifications are invalid insofar as the franchise to vote in general bond elections are concerned under the ruling in *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S. Ct. 1990, 26

L. Ed. 2d 523 (1970), such ruling does not affect prior ruling of Idaho supreme court in *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970) holding such qualifications valid as to elections already held. *Muench v. Paine*, 94 Idaho 12, 480 P.2d 196 (1971).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.

Reorganization with assumption of debt.

Residence of voters.

Constitutionality.

There was a lack of uniformity in the law on the qualifications of school electors and an attempt by legislature, 1917, ch. 47, p. 106, to make the law uniform was declared unconstitutional. *Griffith v. Owens*, 30 Idaho 647, 166 P. 922 (1917).

Reorganization with Assumption of Debt.

Portion of plan for reorganization of school districts which provided that the debt of the two districts as formerly organized, be assumed by the new school district which resulted in making taxpayers of one of the old school districts proportionately liable for the bonded indebtedness of the other old school

district, was invalid where the voters were not limited to those persons possessing the qualifications of voting at a bond election and the plan was not carried by the two-thirds majority required to approve a bonded indebtedness. *In re Joint Class A Sch. Dist. No. 370*, 77 Idaho 453, 295 P.2d 249 (1956).

Residence of Voters.

Bond election was not invalid, even though some of the voters voted in county in which they were not resident, contrary to Const., Art. VI, § 2, since constitutional provision was directory only after the election had been held. *Lewis v. Woodall*, 72 Idaho 16, 236 P.2d 91 (1951).

RESEARCH REFERENCES

A.L.R. — Residence for purpose of voting. 44 A.L.R.3d 797.

Residence of students for voting purposes. 44 A.L.R.3d 797.

33-405A. Residence defined. — a. Residence, for the purpose of voting in school elections, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.

b. In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which the exemption in section 63-602G, Idaho Code, is filed, and motor vehicle registration.

c. A qualified elector who has left his home and gone into another state or territory, county, school district or in the event of trustee election another

district trustee zone for a temporary purpose only shall not be considered to have lost his residence.

d. A qualified elector shall not be considered to have gained a residence in any school district or, in the event of a trustee election, any trustee zone of a school district of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when the elector has accomplished the purpose that brought him there.

e. If a qualified elector moves to another school district or trustee zone or to another state or any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in the school district or trustee zone in which he had previously resided. [I.C., § 33-405A, as added by 1982, ch. 60, § 9, p. 106; am. 1989, ch. 288, § 1, p. 713; am. 1996, ch. 322, § 19, p. 1029.]

STATUTORY NOTES

Effective Dates. — Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

33-405B. Challenge of voters. — Any judge may challenge any elector attempting to vote in a school district election. In the event any person offering to vote is challenged, one (1) of the judges must declare the qualifications of an elector to such person. If the person so challenged then declares himself duly qualified and the challenge is not withdrawn, the elector shall be entitled to vote upon subscribing to the elector's oath. [I.C., § 33-405B, as added by 1982, ch. 60, § 10, p. 106.]

33-406. Absentee voting. — For the purposes of this section the term "clerk" shall mean the clerk of the board of county commissioners whenever an election involves changing the boundaries of school districts, or the creation of new school districts by consolidation of districts or division of a district. In all other school elections the term "clerk" shall mean the clerk of the board of trustees of the school district.

In any school election, a qualified school elector may vote in such election by absentee ballot in the manner herein provided.

Any such elector may make written application to the clerk for a ballot or ballots of the kind or kinds to be voted on at such election, which application shall contain the name of the elector, the trustee zone of the district in which he resides, and his present address. The application for an absent elector's ballot shall be filed with the clerk not later than 5:00 p.m. of the day before the election.

The clerk receiving such application shall, not more than twenty-eight (28) days prior to the day of the election, deliver to said applicant elector personally or by mail to the mailing address given in the application, postage prepaid, a ballot or ballots, one (1) of each kind thereof, to be voted on in the election, and a form of oath of qualification.

The elector shall vote in secret and shall enclose his ballot or ballots in an envelope to be supplied by the clerk and seal the same. The elector shall

then place the secrecy envelope in a return envelope, together with the form of oath of qualification executed by him, and address and mail, or deliver, the same to the clerk. The absentee ballot must be received by the clerk, not later than 8:00 p.m. on the day of the election, before such ballot may be counted.

Any elector physically unable to mark his own ballot may receive assistance in marking his ballot from the officer delivering same or an available person of his own choosing. In the event the officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. No election officer or any other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

The written applications shall be kept by the clerk as a part of the records of the election and he shall, on the day of the election and before the polling places are closed, deliver to the proper board of election all such envelopes together with a list, compiled and signed by him, of the electors making application to vote in absentia.

The board of election shall verify all return envelopes delivered to it by the clerk against the names appearing on the said list, open the return envelopes and examine the elector's oath. If these are found to be in order, the ballots shall remain in the secrecy envelopes and be placed in the ballot box in the same manner as though the elector were personally present and voting; and the voter's name shall thereupon be subscribed in any polling book or other record kept at such election. [1963, ch. 13, § 49, p. 27; am. 1967, ch. 12, § 1, p. 20; am. and redesign. 1982, ch. 60, § 11, p. 106; am. 1983, ch. 71, § 1, p. 156; am. 1987, ch. 179, § 1, p. 355; am. 1992, ch. 187, § 2, p. 581; am. 1994, ch. 161, § 1, p. 368; am. 1998, ch. 56, § 1, p. 209; am. 2000, ch. 205, § 1, p. 514; am. 2006, ch. 232, § 2, p. 689.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 232, in the second paragraph, deleted “who expects to be absent from the district on the day of the election, or who will be unable, because of physical disability or blindness, to go to the polling place” following “school elector” and inserted “absentee ballot.”

Compiler's Notes. — This section was formerly compiled as § 33-405.

Former § 33-406 was amended and redesignated as § 33-407 by S.L. 1982, ch. 60, § 13.

Effective Dates. — Section 2 of S.L. 1983, ch. 71 declared an emergency. Approved March 23, 1983.

Section 3 of S.L. 2006, ch. 232 declared an emergency. Approved March 30, 2006.

33-406A. Challenging absentee elector's vote. — The vote of any absent elector may be challenged in the same manner as other votes are challenged and the receiving judges shall have power and authority to determine the legality of such ballot. If the challenge be sustained, or if the receiving judges determine that the elector is not a qualified elector, the envelope containing the ballot of such elector shall not be opened and the judges shall endorse on the back of the envelope the reason therefor. Whenever it shall be made to appear to the receiving judges by sufficient proof that any elector who has marked and forwarded his ballot has died, then the envelope containing the ballot of such deceased elector shall not be

opened and the judges shall make proper notation on the back of such envelope. If an absent elector's envelope contains more than one (1) marked ballot of any kind, none of such ballots shall be counted and the judges shall make notations on the back of the ballots of the reason therefor. Judges of election shall certify in their returns the number of absent electors' ballots cast and counted and the number of such ballots rejected. [I.C., § 33-406A, as added by 1982, ch. 60, § 12, p. 106.]

33-407. Return and canvass of elections. — In any school election involving the excision and annexation of territory, or the consolidation of school districts, or the division of a school district, the board of county commissioners of the county in which the election is held, or, in the case of a joint school district, the board of county commissioners of the home county of the school district, shall constitute the board of canvassers. In all other school elections, the board of trustees of each school district shall act as the board of canvassers.

Following the close of the polls at the time stated in the notice of election, each board of election shall open the ballot boxes and compute the results in public view. Any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. In the event of a bond election or any other election requiring more than a simple majority conducted by a school district, any qualified elector casting such ballot or part of a ballot shall be deemed not to have voted at or participated in such bond election and the ballot or part of a ballot shall not be counted in determining the number of qualified electors voting at or participating in such elections. Within not more than three (3) days thereafter each board of election shall make return to the chairman of the board of canvassers. Said return shall include the computation of the results of the election and all ballots cast at the election, both those counted and those rejected.

At its next meeting after receiving all returns from the board or boards of election, the board of trustees or the board of county commissioners, when acting as a board of canvassers shall canvass all returns of the election. The board of canvassers shall examine and make a statement of the total number of votes cast for all candidates or questions that shall have been voted upon at the election. The statement shall set forth the names of the candidates or questions for which the votes have been cast. It shall also include the total number of votes cast for each candidate and/or the total number of affirmative and negative votes cast for any question voted upon at the election. The board of trustees of the school district, when acting as a board of canvassers, shall enter the results of the election as reflected in such a statement in the minutes of the board of trustees.

The board of county commissioners, when acting as a board of canvassers, shall canvass the returns and shall give notice of the result of the election as reflected in such statement to the board of trustees of any school district involved in the election. If the proposals have been approved by the majority or majorities required by law, the board of county commissioners shall thereupon enter its order showing the proposals as having been approved, and shall also give notice of such approval to the board of county commis-

sioners of any other county in which shall lie any part of the territory of any school district affected by the result of the election. The board of county commissioners of each county shall thereupon make appropriate corrections in the legal descriptions of any school district boundaries, within its county whenever the result of the election requires such correction.

All returns of elections, including ballots cast thereat, shall be kept and retained by the clerk of the board of trustees, or by the clerk of the board of county commissioners, as the case may be, for not less than eight (8) months after the date of the election. [1963, ch. 13, § 50, p. 27; am. and redesign. 1982, ch. 60, § 13, p. 106.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-406.

33-408. Election contests — Grounds of contest. — The election of any person to a school board of trustees, or an election concerning any proposition submitted to a vote of the people in a school district election may be contested:

1. For malconduct, fraud, or corruption on the part of the judges of election in any polling place or of any board of canvassers, or any member of either board sufficient to change the result.
2. When the incumbent was not eligible to the office at the time of the election.
3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights.
4. When the incumbent has given or offered to any elector, or any judge, clerk or canvasser of the election, any bribe or reward in money, property or anything of value for the purpose of procuring his election.
5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result.
6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result.
7. When the incumbent is in default as a collector and custodian of public money or property.
8. For any cause which shows that another person was legally elected.
9. For any cause which shows that the election was not conducted in conformance with the provisions of this chapter. [I.C., § 33-408, as added by 1982, ch. 60, § 14, p. 106.]

33-409. Bond election and levy increases — Time for filing — Validation of elections and bonds. — a. The provisions of this chapter with respect to the contest of school district elections shall be applicable to bond elections conducted by school districts and to elections conducted by school districts for levy increases as authorized by sections 33-802, 33-803 and 33-804, Idaho Code. Any such contest shall be regarded as one contesting the outcome of the vote on the bond or levy proposition, rather than election to office, and the school district calling the election rather than

a person declared to have been elected to office, shall be regarded as the defendant.

b. When the validity of any bond or levy election is contested upon any of the grounds enumerated in section 33-408, Idaho Code, the plaintiff or plaintiffs must, within forty (40) days after the votes are canvassed and the results thereof declared, file in the proper court a verified written complaint setting forth, in addition to the other requirements of this chapter, the following:

1. The name of the party contesting the bond or levy election, and that he is an elector of the school district conducting the bond or levy election.
2. The proposition or propositions voted on at the election which are contested.
3. The particular grounds of such contest.

c. No such election contest shall be maintained and no bond or levy election shall be set aside or held invalid unless a complaint is filed as permitted hereunder within the period prescribed in this section. As to bond or levy elections which have been held prior to the effective date of section 34-2001A, Idaho Code, no such contest shall be maintained wherein it is alleged that the election should be set aside or held on any ground enumerated in section 33-408, Idaho Code, unless such election contest be filed as herein provided within forty (40) days from and after the effective date of section 34-2001A, Idaho Code.

d. All bond elections conducted by school districts prior to the effective date of section 34-2001A, Idaho Code, and all proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legally binding obligations in accordance with their terms. Nothing in the provisions of this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is being contested at the time this section takes effect, or any election the legality of which is contested within the forty (40) day period from and after the effective date of section 34-2001A, Idaho Code. [I.C., § 33-409, as added by 1982, ch. 60, § 15, p. 106; am. 1982, ch. 313, § 1, p. 787.]

STATUTORY NOTES

Compiler's Notes. — Section 34-2001A, referred to in c. and d., was enacted by S.L. 1969, ch. 208, § 1, effective March 21, 1969.

33-410. Misconduct of judges. — When misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election, unless the vote of the polling place would change the result as to the office or question for which the election had been held. [I.C., § 33-410, as added by 1982, ch. 60, § 16, p. 106.]

33-411. Jurisdiction — Election contests. — The district courts shall hear and determine contests of election of school district trustees and all other school elections concerning any other subject which may by law be

submitted to the vote of the people upon any of the grounds enumerated in section 33-408, Idaho Code. [I.C., § 33-411, as added by 1982, ch. 60, § 17, p. 106; am. 1982, ch. 313, § 2, p. 787.]

33-412. Who may contest an election. — Any school district election may be contested upon any of the grounds enumerated in section 33-408, Idaho Code, by any qualified elector of the school district, school district trustee zone, or territory in and for which the election was held. [I.C., § 33-412, as added by 1982, ch. 60, § 18, p. 106; am. 1982, ch. 313, § 3, p. 787.]

33-413. Complaint and security for costs. — Except for bond elections and elections for levy increases which shall be governed by the provisions of section 33-409, Idaho Code, the contestants shall file in the proper court within twenty (20) days after the votes are canvassed, a complaint setting forth the name of the contestant, and that he is an elector competent to contest such election, the election contested, the time of the election, and the particular causes of contest, which complaint shall be verified by the affidavit of the contestant, that the causes set forth are true as he verily believes. In all school elections, including bond elections and elections for levy increases, the contestant must also file a bond, with security to be approved by the clerk of the court or the district judge, as the case may be, conditioned to pay all costs in case the election be confirmed, the complaint dismissed, or the prosecution fail. [I.C., § 33-413, as added by 1982, ch. 60, § 19, p. 106; am. 1982, ch. 313, § 4, p. 787.]

JUDICIAL DECISIONS

Filing of Bond.

This section gives the trial judge discretion as to the amount of bond to be posted, not whether or not a bond must be posted; there-

fore, the trial court erred in waiving the bond requirement of this section. *Lind v. Rockland Sch. Dist.*, 120 Idaho 928, 821 P.2d 983 (1991).

33-414. Complaint — Specific allegations. — When the reception of illegal votes or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, if known, with the location of the polling place where they voted or offered to vote, shall be set forth in the complaint. [I.C., § 33-414, as added by 1982, ch. 60, § 20, p. 106.]

33-415. Issuance of summons. — Upon the filing of such complaint, summons shall issue against the person whose office is contested, or in the case of any other election, against the school district calling the election, and a copy of the complaint shall in all cases accompany the summons. [I.C., § 33-415, as added by 1982, ch. 60, § 21, p. 106.]

33-416. Procedure in general. — Procedures including, but not limited to, the taking of testimony and the subpoenaing of witness shall be the same as in other cases in the court where the case is tried as shall the style, form and manner of service of process and papers, and the fees of officers

and witnesses. The actual proceedings of the case shall be simulated to those in an action, so far as practicable, but shall be under the control and direction of the courts which shall have all the powers necessary to the right hearing and determination of the matter; to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate; to adjourn from day to day; to make any order concerning immediate costs, and to enforce its orders by attachment. Proceedings shall be governed by the rules of law and evidence applicable to the case. [I.C., § 33-416, as added by 1982, ch. 60, § 22, p. 106.]

33-417. Voters to testify as to qualifications. — The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter; and if he was not a qualified voter in the election in which he voted, then to answer for whom or as to how he voted; and if the witness answers such questions no part of his testimony in that trial shall be used against him in any criminal action. [I.C., § 33-417, as added by 1982, ch. 60, § 23, p. 106.]

33-418. Liability for costs. — The contestant and the responding party, whether it be a newly elected official or a school district, are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed or the complaint be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs, and if the judgment be against the responding party or the election be set aside, it shall be against the contestee for costs. [I.C., § 33-418, as added by 1982, ch. 60, § 24, p. 106.]

JUDICIAL DECISIONS

Cited in: *Lind v. Rockland Sch. Dist.*, 120 Idaho 928, 821 P.2d 983 (1991).

33-419. Form of judgment. — The judgment of the court in cases of a contested election shall confirm or annul the election according to the right of the matter or, in case the contest is in relation to the election of a school board trustee, shall declare as elected the person who shall appear to be duly elected. [I.C., § 33-419, as added by 1982, ch. 60, § 25, p. 106.]

33-420. Determination of tie vote. — In a school district trustee election, if it appears that two (2) or more persons have, or would have had if the legal ballots cast or intended to be cast for them had been counted, the highest and an equal number of votes for the same office, the person to be declared duly elected shall be determined in accordance with the provisions of section 33-503, Idaho Code. [I.C., § 33-420, as added by 1982, ch. 60, § 26, p. 106.]

33-421. Election declared void. — When a person whose trustee election is contested is found to have received the highest number of legal

votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void and the judgment in such a case shall provide for a new trustee election to be conducted by the school district. [I.C., § 33-421, as added by 1982, ch. 60, § 27, p. 106.]

33-422. Appeal. — The party against whom a judgment is rendered in cases of an election contest tried in district court may appeal to the supreme court. However, in the event of a trustee election, if the appellant be in possession of the office, such appeal shall not supersede the execution of the judgment of the court. [I.C., § 33-422, as added by 1982, ch. 60, § 28, p. 106.]

33-423. Applicability of penal provisions. — The penal provisions of chapter 23, title 18, Idaho Code, with the exception of section 18-2322, Idaho Code, shall apply to school elections conducted pursuant to this chapter. [I.C., § 33-423, as added by 1984, ch. 46, § 1, p. 75.]

33-424. Initiating recall proceedings. — Whenever any legal voter of the school district in the same trustee zone as the school trustee for whom the recall is being submitted, either individually or on behalf of an organization, desires to demand the recall and discharge of the school trustee, under the provisions of article VI, section 6, of the constitution of the state of Idaho, he shall send or deliver to the clerk of the board a copy of a petition of recall duly signed by at least twenty (20) electors eligible to sign such petition. The receiving officer shall immediately examine the petition. The clerk of the board shall indicate in writing on the recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, the clerk of the board shall immediately inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of certified signatures within sixty (60) days following the date of approval as to form. Any petition that has not been perfected with the required number of certified signatures within the sixty (60) days allowed shall be declared void in its entirety. [I.C., § 33-424, as added by 1986, ch. 348, § 1, p. 856; am. 1990, ch. 94, § 2, p. 194.]

33-425 — 33-427. Petition — Where filed — Ballot synopsis — Determination by magistrate court — Correction of ballot synopsis. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, added by 1986, ch. 348, §§ 2-4, p. 856, were which comprised I.C., §§ 33-425 — 33-427, as repealed by S.L. 1990, ch. 94, § 1.

33-428. Filing petitions — Time limitations. — The sponsors of a recall demanded of any school trustee shall stop circulation and file all

petitions with the appropriate school board clerk not less than six (6) months before the next regular election in which the school trustee whose recall is petitioned is subject to reelection. [I.C., § 33-428, as added by 1986, ch. 348, § 5, p. 856; am. 1990, ch. 94, § 3, p. 194; am. 1993, ch. 64, § 1, p. 166.]

33-429. Petition — Form. — Recall petitions shall be printed on single sheets of paper of good writing quality including, but not limited to, newsprint not less than eight and one-half (8 1/2) inches in width and not less than fourteen (14) inches in length. Such petitions shall be substantially in the following form:

WARNING

Every person who signs this petition with any other than his true name, or who knowingly (1) signs more than one (1) of these petitions, (2) signs this petition when he is not a legal voter, or (3) makes herein any false statement, may be fined, or imprisoned, or both.

Petition for the recall of (here insert the name of the person whose recall is petitioned for) to the (here insert the name and title of the clerk of the school board with whom the charge is filed).

We, the undersigned citizens and legal voters of (the school district's official name and school trustee zone number), respectfully direct that a special election be called for the following reasons: (setting out the reasons in a recall statement of not more than two hundred (200) words); each of us for himself says: I have personally signed this petition; I am a legal voter of the state of Idaho in (the school district's official name and school trustee zone number) and county written after my name, and my residence address is correctly stated, and to my knowledge, have signed this petition only once.

Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho)
) ss.
County of)

I,, swear, under penalty of perjury, that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

(Signature)
Post Office address
.....

Subscribed and sworn to before me this .. day of,
(Notary Seal)

Notary Public

Residing at

[I.C., § 33-429, as added by 1986, ch. 348, § 6, p. 856; am. 1990, ch. 94, § 4, p. 194; am. 2002, ch. 32, § 13, p. 46.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

33-430. Petition — Size. — Each recall petition at the time of circulating, signing and filing with the clerk of the board with whom it is to be filed, shall consist of not more than five (5) sheets with numbered lines for not more than twenty (20) signatures on each sheet, with the prescribed warning, title and form of petition on each sheet, and a full, true and correct copy of the original statement of the charges against the school trustee referred to therein, printed on sheets of paper of like size and quality as the petition, firmly fastened together. [I.C., § 33-430, as added by 1986, ch. 348, § 7, p. 856.]

33-431. Number of signatures required. — When the person, demanding the recall of a school trustee has secured sufficient signatures upon the recall petition he may submit the same to the clerk of the school board for filing in his office. The number of signatures required shall be equal to twenty percent (20%) of the total number of votes cast for all candidates at the last election during which the school trustee, whose recall is demanded, was elected. If the school trustee whose recall is demanded was appointed, the number of signatures required shall be equal to twenty percent (20%) of the total number of votes cast for all candidates at the last election during which his predecessor was elected. [I.C., § 33-431, as added by 1986, ch. 348, § 8, p. 856.]

33-432. Canvassing petition for sufficiency of signatures — Notice. — Upon the filing of a recall petition in his office, the clerk of the school board with whom the charge was filed shall stamp on each petition the date of filing, and shall notify the person filing them and the school trustee whose recall is demanded of the date when the petitions will be canvassed, which date shall be not more than ten (10) days from the date of its filing. [I.C., § 33-432, as added by 1986, ch. 348, § 9, p. 856; am. 2004, ch. 252, § 1, p. 723.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2004, ch. 252 declared an emergency. Approved March 23, 2004.

33-433. Verification and canvass of signatures — Procedure. — (1) Upon the filing of a recall petition, the clerk of the school board shall proceed to verify and canvass the names of legal voters on the petition.

(2) The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed recall so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the magistrate court. The clerk of the school board may limit the number of observers if in his opinion a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides, but in no case shall fewer than two (2) observers on each side be allowed. If the clerk of the school board finds the same name signed to more than one (1) petition, he shall reject all but one (1) such valid signature. [I.C., § 33-433, as added by 1986, ch. 348, § 10, p. 856.]

33-434. Fixing date for recall election — Notice. — If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the clerk of the school board shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the school trustee charged shall be recalled and discharged from office. The special election shall be held not less than fourteen (14) days nor more than forty-five (45) days from the certification. Notice shall be given in the manner as required by law for all other school elections as provided in section 33-402, Idaho Code. [I.C., § 33-434, as added by 1986, ch. 348, § 11, p. 856.]

33-435. Response to recall petition statement. — When a date for a special election is set, the clerk of the school board shall serve a notice of the date of the election to the school trustee whose recall is demanded and the person demanding recall. Such notice may be made only in person or by certified mail, return receipt requested. After having been served a notice of the date of the election, the school trustee whose recall is demanded may submit to the clerk of the school board a response, not to exceed two hundred (200) words in length, to the recall statement. Such response shall be submitted by the seventh consecutive day after service of the notice. The clerk of the school board shall promptly send a copy of the response to the person who filed the petition. [I.C., § 33-435, as added by 1986, ch. 348, § 12, p. 856; am. 1990, ch. 94, § 5, p. 194.]

33-436. Destruction of insufficient recall petition. — If it is found that the recall petition does not contain the requisite number of signatures of certified legal voters, the clerk of the school board shall so notify the person filing the petition, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within thirty (30) days of the date that the clerk finds the petition defective for lack of certified signatures. If the petition is not perfected within the thirty (30) day period, the clerk shall declare the petition void in its entirety. [I.C., § 33-436, as added by 1986, ch. 348, § 13, p. 856; am. 1990, ch. 94, § 6, p. 194.]

33-437. Invalid names — Record of. — The clerk of the school board shall keep a record of all names appearing thereon which are not certified to be legal residents of the trustee zone, and of all names appearing more than once thereon, and he may report the same to the prosecuting attorneys of the respective counties where such names appear to have been signed, to the end that prosecutions may be had for such violation of the provisions of this chapter. [I.C., § 33-437, as added by 1986, ch. 348, § 14, p. 856.]

33-438. Conduct of election — Form of ballot. — The special election to be called for the recall of school trustees shall be conducted in the same manner as regular school trustee elections are conducted. The clerk of the school board shall provide for the holding of recall elections and the necessary places and officers, ballot boxes, ballots, poll books, voting machines, supplies, and returns as are required by law for holding regular school trustee elections. The ballots at any recall election shall contain a full true, and correct copy of the recall statement, the school trustee's response to the recall statement if such has been filed, and shall be so arranged that any voter can, by making one cross (X), express his desire to have the school trustee charged recalled from his office, or retained therein. The following form shall substantially comply with the provisions of this section:

RECALL BALLOT

| | |
|--|--|
| Here insert the recall statement. | Here insert the school trustee's response to the recall statement. |
| FOR the recall of (here insert the name of the school trustee) AGAINST the recall [of] (here insert the name of the school trustee) | |
| [I.C., § 33-438, as added by 1986, ch. 348, § 15, p. 856; am. 1990, ch. 94, § 7, p. 194.] | |

STATUTORY NOTES

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| Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted. | The bracketed insertion in the last line of the section was made by the publisher for consistency. |
|---|--|

33-439. Ascertaining the result — When recall effective. — The votes on a recall election shall be counted, canvassed, and the results certified in the manner provided by law for counting, canvassing, and certifying the results of an election for school trustee.

To recall any school trustee, a majority of the votes cast at the recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall must at least equal the number of votes cast in favor of such trustee as a candidate at the last election. A vacancy in the office shall exist when the board of canvassers certifies the results of the election in favor of the recall vote. [I.C., § 33-439, as added by 1986, ch. 348, § 16, p. 856; am. 1990, ch. 94, § 8, p. 194.]

33-440. Enforcement provisions — Mandamus — Appeals. — The magistrate court of the county in which the school trustee subject to recall resides has original jurisdiction to compel the performance of any act required of any public officer or to prevent the performance by any such officer of any act in relation to the recall not in compliance with law. [I.C., § 33-440, as added by 1986, ch. 348, § 17, p. 856.]

33-441. Violations by signers. — Every person who signs a recall petition with any other than his true name is guilty of a felony. Every person who knowingly (1) signs more than one (1) petition for the same recall, (2) signs a recall petition when he is not a legal voter, or (3) makes a false statement as to his residence on any recall petition is guilty of a misdemeanor. [I.C., § 33-441, as added by 1986, ch. 348, § 18, p. 856.]

STATUTORY NOTES

Cross References. — Punishment for felony when no other penalty prescribed, § 18-112. Punishment for misdemeanor when no other penalty prescribed, § 18-317.

33-442. Violations — Corrupt practices. — (1) Every person is guilty of a misdemeanor, who:

(a) Wilfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purpose or effect of any recall petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such recall petition;

(b) Presents to any officer for filing any recall petition to which is attached, appended or subscribed any signature which the person so filing the petition knows to be false or fraudulent, or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto;

(c) Circulates or causes to circulate any recall petition, knowing the same to contain false, forged or fictitious names;

(d) Makes any false affidavit concerning any recall petition or the signatures appended thereto;

(e) Offers, proposes or threatens for any pecuniary reward or consideration:

(i) To offer, propose, threaten or attempt to sell, hinder or delay any recall petition or any part thereof or any signatures thereon;

(ii) To offer, propose or threaten to desist from beginning, promoting or circulating any recall petition;

(iii) To offer, propose, attempt or threaten in any manner or form to use any recall petition or any power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest.

(2) A public officer is guilty of a felony, who knowingly makes any false return, certification or affidavit concerning any recall petition, or the signatures appended thereto. [I.C., § 33-442, as added by 1986, ch. 348, § 19, p. 856.]

STATUTORY NOTES

Cross References. — Punishment for felony when no other penalty prescribed, § 18-112.

Punishment for misdemeanor when no other penalty prescribed, § 18-317.

33-443. Limitation of ballot access for multi-term incumbents. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised Init. Measure 1994, No. 2, § 4, p. 1317, was repealed by S.L. 2002, ch. 1, § 1.

CHAPTER 5

DISTRICT TRUSTEES

SECTION.

- 33-501. Board of trustees.
- 33-502. Declarations of candidacy for trustees.
- 33-502A. Declaration of intent for write-in candidates.
- 33-502B. Board of trustees — One nomination — No election.
- 33-502C. Withdrawal of candidacy.
- 33-502D. Procedure for correction of ballots when a withdrawal occurs after printing — Notice.
- 33-503. Election of trustees — Uniform date.
- 33-504. Vacancies on boards of trustees.
- 33-505. Board of trustees, district newly created.
- 33-506. Organization *and government of board of trustees.
- 33-507. Limitation upon authority of trustees.
- 33-508. Duties of clerk.
- 33-509. Duties of the treasurer.
- 33-509A. Assistant treasurers.
- 33-510. Annual meetings — Regular meetings — Boards of trustees.
- 33-511. Maintenance of schools.
- 33-512. Governance of schools.

SECTION.

- 33-512A. District curricular materials adoption committees.
- 33-512B. Suicidal tendencies — Duty to warn.
- 33-513. Professional personnel.
- 33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement.
- 33-514A. Issuance of limited contract — Category 1 contract.
- 33-515. Issuance of renewable contracts.
- 33-515A. Supplemental contracts.
- 33-516. Right to renewable contract when district is divided, consolidated or reorganized.
- 33-517. Noncertificated personnel.
- 33-517A. School districts — Noncertificated employees — Group health insurance.
- 33-518. Employee personnel files.
- 33-519. Release for religious instruction.
- 33-520. Policy governing medical inhalers or epinephrine auto-injectors.
- 33-521. Employee severance in consolidated district.

33-501. Board of trustees. — Each school district shall be governed by a board of trustees. The board of trustees of each elementary school district shall consist of three (3) members, and the board of trustees of each other school district shall consist of five (5) members. Provided, however, that the board of trustees of any district which has had a change in its district boundaries subsequent to June 30, 1973, may consist of no fewer than five (5) nor more than nine (9) members if such provisions are included as part of an approved proposal to redefine and change trustee zones as provided in section 33-313, Idaho Code. The board of trustees of any district that has had a change in its district boundaries because of district consolidation on and after January 1, 2008, shall consist of five (5) members if two (2)

districts consolidated or seven (7) members if three (3) or more districts consolidated. Except as otherwise provided by law, a school district trustee shall be elected for a term of three (3) years or until the annual meeting of his district held during the year in which his term expires.

Each trustee shall at the time of his nomination and election, or appointment, be a school district elector of his district and a resident of the trustee zone from which nominated and elected, or appointed.

Each trustee shall qualify for and assume office at the annual meeting of his school district next following his election, or, if appointed, at the regular meeting of the board of trustees next following such appointment. An oath of office shall be administered to each trustee, whether elected, re-elected or appointed. Said oath may be administered by the clerk, or by a trustee, of the district, and the records of the district shall show such oath of office to have been taken, and by whom administered and shall be filed with the official records of the district. [1963, ch. 13, § 51, p. 27; am. 1973, ch. 125, § 2, p. 236; am. 1980, ch. 32, § 1, p. 56; am. 2008, ch. 351, § 2, p. 969.]

STATUTORY NOTES

Cross References. — Child labor law, school trustees to bring complaint under, § 44-1308.

Delinquent children, school trustees to report to district court, §§ 20-510, 20-527.

Junior college districts, cooperation with, § 33-2115.

Amendments. — The 2008 amendment, by ch. 351, added the fourth sentence in the first paragraph.

JUDICIAL DECISIONS

Authority of School Board.

The building principal had no authority to bind the school board to an "extra duty" employment contract with teachers, since

only the board had that authority. *Gilmore v. Bonner County Sch. Dist. No. 82*, 132 Idaho 257, 971 P.2d 323 (1999).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Continuity as corporate body.

Indebtedness.

Suits by and against.

Continuity as Corporate Body.

The board was a continuous body or entity; the corporation continued unchanged and had the power to contract; its contracts were contracts of the board and not of its individual members. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

Indebtedness.

Common school district could incur indebtedness during any year in amount which did not exceed its income and revenue for that year. *Boise City Nat'l Bank v. Independent Sch. Dist. No. 40*, 33 Idaho 26, 189 P. 47 (1920).

Suits By and Against.

Action against board of trustees was, in fact, action against state. *Thomas v. State*, 16

Idaho 81, 100 P. 761 (1909), overruled on other grounds, *Grant Constr. Co. v. Burns*, 92 Idaho 408, 443 P.2d 1005 (1968).

Each school district, whether common or independent, was made a body corporate and was given the power to sue and be sued. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

An unqualified grant of power "to sue and be sued" carried with it all powers that were ordinarily incident to the prosecution and defense of a suit at law or in equity. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

One district could maintain an action against another, where, by either mistake, fraud, or inefficiency of public servants, the one district had received and expended for

educational purposes, in its territory, more than its share of the public fund; and the other district by reason thereof had received less than its share. Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1, 56 Idaho 426, 55 P.2d 144 (1936).

33-502. Declarations of candidacy for trustees. — Any person legally qualified to hold the office of school trustee, may file a declaration of candidacy for the office, each of which shall bear the name of the candidate, state the term for which declaration of candidacy is made, and bear the signature of not less than five (5) school district electors resident of the trustee zone of which the candidate is resident. The declaration shall be filed with the clerk of the board of trustees of the school district not later than 5:00 p.m. on the fifth Friday preceding the day of election of trustees. [1963, ch. 13, § 52, p. 27; am. 1967, ch. 9, § 1, p. 14; am. 1992, ch. 187, § 3, p. 581.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1992, ch. 187 declared an emergency. Approved April 8, 1992.

33-502A. Declaration of intent for write-in candidates. — No write-in vote for school district trustee in a school district election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of school trustee if elected. The declaration of intent shall be filed with the school district clerk. Such declaration of intent shall be filed not later than fourteen (14) days before the day of election. [I.C., § 33-502A, as added by 1988, ch. 69, § 1, p. 100; am. 2000, ch. 204, § 1, p. 513.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2000, ch. 204 provided that the act shall be in full force and effect on and after July 1, 2000.

33-502B. Board of trustees — One nomination — No election. — In any election for trustees, if, after the expiration of the date for filing written nominations for the office of trustee, it appears that only one (1) qualified candidate has been nominated for a position to be filled or if only one (1) candidate has filed a write-in declaration of intent as provided by section 33-502A, Idaho Code, no election shall be held for that position, and the board of trustees or the school district clerk with the written permission of the board, shall within thirteen (13) days before the scheduled date of the election declare such candidate elected as a trustee, and the school district clerk shall immediately prepare and deliver to the person a certificate of election signed by him and bearing the seal of the district. The procedure set forth in this section shall not apply to any other school district election. [I.C., § 33-502B, as added by 1990, ch. 332, § 1, p. 910; am. 1993, ch. 51, § 1, p. 132; am. 1994, ch. 160, § 1, p. 367; am. 2004, ch. 26, § 1, p. 43.]

33-502C. Withdrawal of candidacy. — A person who filed a declaration of candidacy in accordance with the provisions of section 33-502, Idaho Code, may withdraw from the election by filing a notarized statement of withdrawal with the clerk of the board of trustees of the school district. The statement shall contain all information necessary to identify the person and the office sought. A person may withdraw at any time prior to the day of the election. [I.C., § 33-502C, as added by 1994, ch. 164, § 1, p. 372.]

33-502D. Procedure for correction of ballots when a withdrawal occurs after printing — Notice. — Whenever a person withdraws from the election by filing a withdrawal of candidacy as provided in section 33-502C, Idaho Code, the clerk of the board of trustees of the school district shall cross the name of the person off the ballot and no votes shall be counted for that person. The clerk of the board of trustees shall also inform the election board at each polling place that the person has withdrawn from the election. [I.C., § 33-502D, as added by 1994, ch. 164, § 2, p. 372.]

33-503. Election of trustees — Uniform date. — The election of school district trustees including those in charter districts shall be on the third Tuesday in May. Notice and conduct of the election, and the canvassing of the returns shall be as provided in sections 33-401 — 33-406, Idaho Code. In each trustee zone, the person receiving the greatest number of votes cast within his zone shall be declared by the board of trustees as the trustee elected from that zone.

If any two (2) or more persons have an equal number of votes in any trustee zone and a greater number than any other nominee in that zone, the board of trustees shall determine the winner by a toss of a coin. [1963, ch. 13, § 53, p. 27; am. 1973, ch. 97, § 1, p. 166; am. 1975, ch. 181, § 1, p. 497.]

STATUTORY NOTES

Compiler's Notes. — Sections 33-401 through 33-406, referred to in the first paragraph of this section, were amended and redesignated as §§ 33-402, 33-403, 33-404, 33-405, 33-406, and 33-407, respectively. The reference should now be to chapter 4, title 33, Idaho Code.

33-504. Vacancies on boards of trustees. — A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office, or within thirty (30) days of when any trustee shall (a) die; (b) resign as trustee; (c) remove himself from his trustee zone of residence; (d) no longer be a resident or school district elector of the district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend four (4) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in section 33-439, Idaho Code.

Such declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above-mentioned conditions are determined to exist.

The board of trustees shall appoint to such vacancy a person qualified to serve as trustee of the school district provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the state superintendent of public instruction of the appointment. Such appointment shall be made within ninety (90) days of the declaration of vacancy. Otherwise, appointments shall be made by the board of county commissioners of the county in which the district is situate, or of the home county if the district be a joint district.

Any person appointed as herein provided shall serve until the annual meeting of school district trustees next following such appointment. At the annual election a trustee shall be elected to complete the unexpired term of the office which was declared vacant and filled by appointment.

The elected trustee shall assume office at the annual meeting of the school district next following the election. [1963, ch. 13, § 54, p. 27; am. 1975, ch. 181, § 2, p. 497; am. 1984, ch. 94, § 2, p. 218; am. 1986, ch. 348, § 20, p. 856; am. 1987, ch. 141, § 1, p. 282.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1975, ch. 181 declared an emergency. Approved March 21, 1975. Section 3 of S.L. 1984, ch. 94 declared an emergency. Approved March 28, 1984.

33-505. Board of trustees, district newly created. — Within ten (10) days after the entry of any order creating a new school district by the consolidation of districts or parts thereof, the trustees of all school districts involved in the consolidation shall meet at the call of the state superintendent of public instruction or his designee and, from their number, shall select a board of trustees of the new district representing each of the merged districts in an equal number to serve as follows: if two (2) districts consolidated, one (1) member representing the board of trustees of each district shall serve until the annual election of trustees next following; one (1) member representing the board of trustees of each district shall serve until the annual election the following year; and one (1) member appointed by the other four (4) members shall serve until the annual election in the year after that. If three (3) or more districts consolidated, three (3) members shall serve until the annual election of trustees next following; three (3) members shall serve until the annual election the following year; and one (1) member appointed by the other six (6) members shall serve until the annual election in the year after that. If the number of merged districts is greater than three (3), the superintendent of public instruction shall appoint as equally as possible from trustees of the previous districts so that each district, if possible, has representation on the consolidated district's board of trustees. The superintendent shall stagger the terms of his appointments so that an equal number of appointees' terms expire annually and those trustees shall sit for election. Thereafter, all trustees who are elected shall serve terms as provided in section 33-501, Idaho Code, for a board of trustees of a school district. The board of trustees shall report the names of said trustees to the state board of education. The board of trustees of the

newly consolidated school district shall expeditiously redraw the trustee zones pursuant to section 33-313, Idaho Code.

The state board of education, at its first meeting next following receipt of notice of the creation of new school districts by the division of a district, shall appoint a board of trustees for each such new district, to serve until the annual election of school district trustees next following.

Boards of trustees selected or appointed as in this section provided shall forthwith meet and organize as provided in section 33-506, Idaho Code, and thereupon the board of trustees of any district, the whole of which has been incorporated within the new district, or which was divided as the case may be, shall be dissolved and its powers and duties shall cease. Prior to the notice of annual election of trustees next following, the board of trustees of each school district created by consolidation or by division of districts shall determine by lot or by agreement which of the trustee zones the trustees therefor shall be elected for a term of one (1) year, which for a term of two (2) years, and which for a term of three (3) years. Thereafter each trustee shall be elected for a term of three (3) years. [1963, ch. 13, § 55, p. 27; am. 2008, ch. 351, § 3, p. 970.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 351, rewrote the first paragraph, which formerly read: "Within ten (10) days after the entry of any order creating a new school district by the consolidation of districts or parts thereof, the trustees of all school districts involved in the consolidation shall meet

at the call of the state board of education and, from their number or from other qualified school district electors of the district, shall select a board of trustees of the new district to serve until the annual election of trustees next following; and shall report the names of said trustees to the state board of education."

33-506. Organization and government of board of trustees. — Each board of school district trustees shall organize at its annual meeting and elect a chairman, a vice-chairman, a clerk, and a treasurer. The clerk and the treasurer may be members of the board of trustees; or, in the discretion of the board, either or both may be selected from among competent and responsible persons outside the membership of the board. The board in its discretion may allow compensation for the clerk, and for the treasurer if other than the county treasurer.

Each member of the board not otherwise compensated by public moneys shall be compensated for actual expenses incurred for travel to, from, and attending meetings of the board. Such compensation shall be paid from the district school funds.

It shall be the duty of each member of the board of trustees to attend all meetings, both regular and special; and the board shall have the following powers and duties:

1. To make by-laws, rules and regulations for its government and that of the district, consistent with the laws of the state of Idaho and the rules and regulations of the state board of education;

2. To call special meetings or elections for such purpose as may be necessary for the proper conduct and management of the school or schools of the district;

3. To employ an attorney or attorneys when deemed for the best interests of the district, or for the purpose of defending the district against any suit or for bringing action deemed necessary to be commenced by the board. [1963, ch. 13, § 56, p. 27; am. 1975, ch. 82, § 1, p. 167; am. 1978, ch. 103, § 1, p. 210; am. 1988, ch. 77, § 1, p. 132.]

JUDICIAL DECISIONS

ANALYSIS

Adoption of rules and regulations.
Regulation of appearance.

Adoption of Rules and Regulations.

In a case involving the discharge of a teacher for paddling students who were unable to work blackboard problems, the trial court erred in estopping the board of trustees from asserting the validity of its teacher's handbook on the erroneous assumption that this section required annual adoption of rules and regulations which would be incorporated in the handbook, since the section does not require annual exercise of its authority. *Kolp v. Board of Trustees*, 102 Idaho 320, 629 P.2d 1153 (1981).

Regulation of Appearance.

A regulation requiring that students in a high school keep their hair length "off the eyes, off the ear, and off the collar" was held unconstitutional when the school authorities failed to show that there was any substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist. No. 25*, 94 Idaho 32, 480 P.2d 878 (1971).

33-507. Limitation upon authority of trustees. — It shall be unlawful for any trustee to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the school district, or to accept any reward or compensation for services rendered as a trustee except as may be otherwise provided in this section. The board of trustees of a school district may accept and award contracts involving the school district to businesses in which a trustee or a person related to him by blood or marriage within the second degree has a direct or indirect interest provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of a school district for deposit in any bank or trust company, or the lending of money by any bank or trust company to any school district, shall not be deemed to be a contract pertaining to the maintenance or conduct of a school district within the meaning of this section; nor shall the payment by any school district board of trustees of compensation to any bank or trust company for services rendered in the transaction of any banking business with such district board of trustees, be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

It shall be unlawful for the board of trustees of any class of school district to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract requires, or will require, the payment or delivery of any school district funds, money or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

When any relative of any trustee or relative of the spouse of a trustee related by affinity or consanguinity within the second degree is considered for employment in a school district, such trustee shall abstain from voting in

the election of such relative, and shall be absent from the meeting while such employment is being considered and determined. [1963, ch. 13, § 57, p. 27; am. 1977, ch. 23, § 1, p. 45; am. 1994, ch. 300, § 1, p. 947; am. 1996, ch. 193, § 3, p. 601.]

STATUTORY NOTES

Cross References. — Sales of merchandise to pupils limited, § 33-1221.

Effective Dates. — Section 4 of S.L. 1996,

ch. 193 declared an emergency. Approved March 12, 1996.

OPINIONS OF ATTORNEY GENERAL

The prohibition of this section against a member of the board of trustees of a school district from receiving a personal pecuniary benefit from a contractual relationship between the school district and the teachers' association is absolute and allows no leeway or exceptions to the prohibition of pecuniary interest. OAG 93-10.

The specific provisions of this section which prohibit a member of the board of trustees of a school district from having a pecuniary interest in any contract pertaining to the maintenance or conduct of the school district takes precedence over the general conflict of interest law found in § 59-704A. OAG 93-10.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Penal statute.
Validity of election.
Void contracts.

Penal Statute.

Prior statute was held to be in its nature penal and should not be extended by construction beyond its natural meaning. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

The former section was founded in public policy and was a salutary one to prevent risk of abuses in the public service. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

Validity of Election.

Election which approved the transfer of the powers and duties of a county board of education to the board of trustees of the school district was not authorized by statute in that the territory supervised by the county board of education was not limited to the territory supervised by the board of trustees and not all the qualified voters were permitted to vote; therefore, such election was null and void. *Board of Trustees v. Board of County*

Comm'rs, 82 Idaho 183, 350 P.2d 743 (1960).

Void Contracts.

Only such contracts made by board as some member or members thereof were pecuniarily interested in, directly or indirectly, were void. *School Dist. No. 15 v. Wood*, 32 Idaho 484, 185 P. 300 (1919).

Where action was brought to recover money paid on a void contract, complaint had to allege that such contract was made with defendant during time that he was member of board of trustees. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

Money paid by municipal corporations upon a void contract may be recovered; rule that neither party to transaction would be permitted to take advantage of its invalidity while retaining its benefits, applied only to voidable contracts and not to contracts of municipal corporation that were absolutely void. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

33-508. Duties of clerk. — The clerk of the board of trustees shall have such duties as shall be prescribed by the board. He shall attend all meetings of the board of trustees, shall keep the record of the proceedings, and shall enter in said record all matters required by law, or by the board, so to be

entered; and said record shall be open to inspection by any person, at all reasonable times.

When the clerk does not attend a meeting of the board of trustees, the board shall appoint some person who, as temporary clerk, shall keep the record of the proceedings of the board and certify the same to the clerk, to be entered by him.

Whenever in the judgment of the board of trustees it is deemed prudent so to do, the clerk may be placed under a fidelity bond, in the manner of section 33-509, in such amount as the board of trustees shall determine. [1963, ch. 13, § 58, p. 27.]

33-509. Duties of the treasurer. — The treasurer elected by the board of trustees of a school district shall have such duties as the board may prescribe. The treasurer shall be placed under fidelity bond issued by a surety company authorized to do business in the state of Idaho, in such amount as the board of trustees may from time to time determine, or under personal bond equal to twice such determined amount with at least two (2) sureties who each shall qualify as in the case of sureties on the bonds of county officers.

The county treasurer of the home county of any elementary school district with less than six (6) teachers within the district shall serve as treasurer of such district, if requested to do so by the school district board of trustees.

The treasurer shall account for the deposit of all moneys of the district in accordance with the provisions of the public depository law, chapter 1, title 57, Idaho Code. [1963, ch. 13, § 59, p. 27; am. 1978, ch. 103, § 2, p. 210; am. 1988, ch. 70, § 1, p. 101; am. 1988, ch. 77, § 2, p. 132.]

STATUTORY NOTES

Amendments. — This section was amended by two 1988 acts which appear to be compatible and have been compiled together.

The 1988 amendment by ch. 70, § 1, in the third paragraph, inserted "account for the," substituted "of all moneys of" for "the moneys of," substituted "chapter 1, title 57, Idaho Code" for "as now appearing or as may be

amended," and made minor changes in punctuation.

The 1988 amendment by ch. 77, § 2, in the second sentence of the first paragraph, substituted "The Treasurer" for "He"; and in the second paragraph, added "if requested to do so by the school district board of trustees."

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Designation of depository.

Estoppel.

Officers exercise public function.

Recovery of misappropriated funds.

Designation of Depository.

Power of board of trustees of independent

school district to designate depository of district funds was necessarily implied from

grant of express powers. *Pocatello Independent School Dist. No. 1 v. Fargo*, 38 Idaho 563, 223 P. 232 (1924).

Estoppel.

Any acts of negligence, misconduct, mistake, or omissions on part of officers of school district, in paying out funds of district, could not estop district from maintaining action to recover back money wrongfully taken. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

Officers Exercise Public Function.

Officers of school district, in paying out funds of district, exercised a public function

and acted for district only in public and governmental capacity. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

Recovery of Misappropriated Funds.

School district officers acted in a governmental capacity and they could not be estopped by any negligence, misconduct, mistake or omission from maintaining an action to recover money wrongfully taken and no laches could be attributed to the district acting in such capacity. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

33-509A. Assistant treasurers. — A board of trustees of a school district may elect one (1) or more assistant treasurers who shall have such duties as the board of trustees may prescribe. Assistant treasurers shall be subject to the control, supervision and direction of the treasurer of the district. An assistant treasurer may perform the statutory duties prescribed by law for the treasurer to the extent authorized by the board of trustees. [I.C., § 33-509A, as added by 1990, ch. 198, § 1, p. 443.]

33-510. Annual meetings — Regular meetings — Boards of trustees. — The annual meeting of each school district shall be on the date of its regular July meeting in each year. Notice of the annual meeting of elementary school districts shall be given as provided in section 33-401 [33-402], Idaho Code, but one (1) publication shall suffice.

Regular meetings of each board of school district trustees shall be held monthly, on a uniform day of a uniform week as determined at the annual meeting. Special meetings may be called by the chairman or by any two (2) members of the board and held at any time. If the time and place of special meetings shall not have been determined at a meeting of the board with all members being present, then notice of the time and place shall be given to each member and announced by written notice conspicuously posted at the school district office and at least two (2) or more public buildings within the school district not less than twenty-four (24) hours before such special meeting is to be convened.

A quorum for the transaction of business of the board of trustees shall consist of a majority of the members of the board. Unless otherwise provided by law, all questions shall be determined by a majority of the vote cast. The chairman of the board may vote in all cases.

All meetings shall conform to the provisions of section 67-2340 through section 67-2345, Idaho Code. [1963, ch. 13, § 60, p. 27; am. 1973, ch. 62, § 1, p. 102; am. 1976, ch. 66, § 1, p. 233; am. 1977, ch. 51, § 1, p. 101; am. 1977, ch. 52, § 1, p. 102; am. 1978, ch. 137, § 1, p. 312.]

STATUTORY NOTES

Cross References. — Meetings open to public, § 67-2342.

Compiler's Notes. — The bracketed reference to "33-402" in the first paragraph was

added by the compiler to reflect the revision of chapter 4, title 33, Idaho Code, by S.L. 1982, chapter 60.

Former § 33-401 was amended and redesignated as § 33-402 by S.L. 1982, ch. 60, § 2.

JUDICIAL DECISIONS

Cited in: Johnson v. Bonner County Sch. Dist., 126 Idaho 490, 887 P.2d 35 (1994).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Contracts entered into prior to meeting.
Evidence.
Functions of meeting.
Meetings.
Notice of meeting.
Organization of meeting prevented.
Postponed meetings.
Quorum.
School district election as binding on trustees.
Statutes directory.
Void tax levy.

Contracts Entered into Prior to Meeting.

Contracts of trustees of common school district which were entered into with school teachers prior to annual school meeting were made subject to law, which impliedly became part of contract, giving electors at annual meeting right to modify contract as to amount of wages and length of school year. Copenhaver v. Common Sch. Dist. No. 17, 56 Idaho 182, 52 P.2d 129 (1935).

Where a written contract of employment was entered into by the board of trustees of a school district with a school teacher prior to the annual school meeting at which a change in the personnel of the board occurred, a school teacher could recover thereon although the contract was to be performed subsequent to the annual meeting, and a contract of employment of a school teacher agreed to at a regular meeting of the board of trustees, but not reduced to writing and executed until after adjournment, was valid and enabled the school teacher to recover thereon. Corum v. Common Sch. Dist. No. 21, 55 Idaho 725, 47 P.2d 889 (1935).

Evidence.

Defendant school board was entitled to show that no executive or closed session took place in suit brought by teacher for damages resulting from her discharge by the board for breach of contract, to have evidence of what actually took place admitted, and to prove that no executive or closed session was held contrary to the former statutory provision. Murray v. Joint Class B. School Dist. No. 181, 80 Idaho 84, 326 P.2d 67 (1958), overruled on other grounds, Dodson v. Stroschien, 83 Idaho

454, 364 P.2d 881 (1961).

Functions of Meeting.

Annual school meeting could exercise functions of deliberative assembly at which qualified electors of common school districts could discuss and dispose of general questions pertaining to school and its interests. Petrie v. Common Sch. Dist. No. 5, 44 Idaho 92, 255 P. 318 (1927).

Meetings.

One member of the board could not defeat or obstruct the transaction of the business of the district by failing to call or attend its regular meetings. Corum v. Common Sch. Dist. No. 21, 55 Idaho 725, 47 P.2d 889 (1935).

Notice of Meeting.

As the former statute did not entitle the chairman of the board to written notice of a regular meeting, his failure to attend a meeting at which two trustees were present could not affect the validity of business transacted at such meeting. Corum v. Common Sch. Dist. No. 21, 55 Idaho 725, 47 P.2d 889 (1935).

Organization of Meeting Prevented.

Where trustees prevented organization of annual school meeting of common school district as a deliberative assembly, contract for construction of addition to schoolhouse to be paid for by special tax levied pursuant to such meeting was void. Petrie v. Common Sch. Dist. No. 5, 44 Idaho 92, 255 P. 318 (1927).

Postponed Meetings.

Meeting held on evening following night of regular meeting complied with the former section where members attending regular

meeting were notified that meeting would be held on next night and absent member was personally notified since meeting, as held, constituted a postponed regular meeting with authority to transact business. *Keyes v. Class "B" School Dist.* No. 421, 74 Idaho 314, 261 P.2d 811 (1953).

Quorum.

Meeting of two of three members of board of trustees of school district at the home of one on the date fixed by statute for the holding of a regular meeting, at which they agreed to hire the plaintiff as a teacher for that district, the chairman of the board having failed to attend any meeting but one following his election, was a legal meeting of the board, giving validity to the contract subsequently entered into with the plaintiff. *Corum v. Common Sch. Dist.* No. 21, 55 Idaho 725, 47 P.2d 889 (1935).

School District Election as Binding on Trustees.

Under former statutes which required electors of school district to vote tax levy for maintenance of school upon trustees' submission of budget setting forth expenditures of

preceding year and requirements for ensuing year, the action of the electors of a common school district in voting on annual budget specifying amount to be used for employment of teachers and total amount to be raised by tax levy for ensuing year was binding on trustees with respect to teachers' contracts previously executed. *Copenhaver v. Common Sch. Dist.* No. 17, 56 Idaho 182, 52 P.2d 129 (1935).

Statutes Directory.

Election having been held, statutes regulatory thereof would be held to be directory unless it appeared that failure to give proper notice, or failure to comply with some other provision, had affected result of election. *King v. Independent Sch. Dist.* No. 37, 46 Idaho 800, 272 P. 507 (1928).

Void Tax Levy.

Where trustees prevented organization of annual meeting of common school district as a deliberative assembly, an attempted levy of special tax in pursuance to such meeting was not authorized. *Petrie v. Common Sch. Dist.* No. 5, 44 Idaho 92, 255 P. 318 (1927).

33-511. Maintenance of schools. — The board of trustees of each school district shall have the following powers and duties:

1. Each elementary school district shall maintain at least one (1) elementary school, and each other school district shall maintain at least one (1) elementary school and one (1) secondary school;

2. To employ necessary help and labor to maintain and operate the schools of the district;

3. To discontinue any school within the district whenever it shall find such discontinuance to be in the best interests of the district and of the pupils therein. For the purposes of this section, discontinuing a school shall mean no longer maintaining a school of any kind, at the same location, except in the case of secondary units as herein provided.

When any school proposed to be discontinued is one which was operated and maintained by a former district now wholly incorporated within the boundaries of the district operated by said board of trustees, and, immediately following reorganization and the dissolution of said former district such school has been continuously operated and maintained at the same location by the presently organized district, the board of trustees must first give notice of such proposal not later than the first day of July next preceding the date of the proposed discontinuance. Such notice shall be posted, and published once, in the manner provided in section 33-401 [33-402], Idaho Code, and shall identify the school proposed to be discontinued.

If, not later than the first day of August following the posting and publishing of the notice of discontinuance, five (5) or more qualified school district electors residing within the school district shall petition the board of trustees for an election to be held within the school district on the question

of discontinuance of that school, the board of trustees shall forthwith order an election to be held within fourteen (14) days of the date of said order, and shall give notice of the election.

Notice of such election shall be posted at or near the main door of the school proposed to be discontinued and at or near the main door of the administrative offices of the school district, and shall also be published in one (1) issue of a newspaper printed in the county in which is situate the school proposed to be discontinued. The notice shall state the date the election is to be held, the place of voting, and the hours between which the polls shall be open. In addition, the notice of election shall describe the area of the particular attendance unit of the school district and shall identify the school proposed to be discontinued; and it shall state that only qualified school district electors residing within the school district may vote on the question of discontinuing the school.

The election shall be held within the school district and there shall be submitted to the electors a ballot containing the proposal:

For discontinuing the school located at ,

Against discontinuing the school located at

If a majority of the qualified electors, hereinabove defined and voting in the election, shall vote against discontinuing that school, then said school shall not be discontinued; and no proposal to discontinue the same school shall be made by the board of trustees of the district within nine (9) months after the date of the election.

If a secondary unit which the trustees of a district propose to close is more than thirty (30) miles by all-weather road from the attendance unit to which it is proposed to transfer such students, then, notwithstanding other provisions of this section, five (5) electors residing within the attendance area of the unit proposed to be closed may, as provided by this section, petition the board of trustees requesting an election to determine whether or not such attendance unit, or any portion of it, shall be closed. The board shall forthwith call and hold an election as herein provided. However, for the purpose of this section relating to the secondary attendance unit thirty (30) miles or more distant from another secondary attendance unit, only the patrons resident in this attendance area shall be eligible to vote, except for attendance units, or portions of them, created after January 1, 2002, in which case qualified school district electors throughout the school district shall be eligible to vote. The election shall be deemed passed and the unit shall not be closed if a majority of those voting in the election vote in favor of retaining the attendance unit. [1963, ch. 13, § 61, p. 27; am. 1967, ch. 366, § 1, p. 1057; am. 1973, ch. 5, § 1, p. 10; am. 2000, ch. 424, § 1, p. 1374; am. 2002, ch. 317, § 1, p. 898.]

STATUTORY NOTES

Cross References. — Transfer of real or personal property to another unit of government, §§ 67-2322 — 67-2325.

Compiler's Notes. — The bracketed reference to "33-402", at the end of the undesignated paragraph following subsection

3., was added by the compiler to reflect the revision of chapter 4, title 33, Idaho Code, by S.L. 1983, chapter 60.

Effective Dates. — Section of S.L. 2000, ch. 424 declared an emergency. Approved April 17, 2000.

Section 2 of S.L. 2002, ch. 317 declared an emergency retroactively to January 1, 2002 and approved March 26, 2002.

JUDICIAL DECISIONS

Removal of Grades.

Where board of trustees moved the high school grades of a school elsewhere and retained the seventh and eighth grades, the school was not discontinued and notice was not required as provided in this section. *Lang*

v. Board of Trustees, 93 Idaho 79, 455 P.2d 856 (1969).

Cited in: *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Approval of electors.
Closing of school.
Constitutionality.
Costs of suit.
Holding elections.
Mandamus.
Procedure.
Removal of grades.

Approval of Electors.

The trustees of an independent or joint independent school district had power to purchase and acquire sites for school buildings of any and all types and erect buildings thereon and change the attendance of pupils by grades or classes from one building to another and sell or otherwise dispose of such sites and buildings without an election by the qualified electors of the district. *Hovenden v. Class A School Dist. No. 411*, 71 Idaho 4, 224 P.2d 1080 (1950).

Closing of School.

Notice of proposed closing of school was required. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

In order to establish capriciousness or arbitrariness on part of board in closing school there had to be more than conjecture or assumption but it had to be clearly shown, it being presumed that public boards do not abuse their discretion or act from improper motives. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

Where elementary school at one locality was discontinued and pupils transferred to other schools, and junior high schools were discontinued in other localities, and the abandoned elementary school was made into a junior high school and pupils from other localities transported to that school, there was no discontinuance of an attendance unit which would require an election. *Cameron v. Lakeland Class A Sch. Dist. No. 272*, 82 Idaho 375, 353 P.2d 652 (1960).

Constitutionality.

Former section as amended in 1949 and 1951 providing for discontinuance of attendance units within reorganized districts, either by vote of the trustees, or by vote of the electors, did not violate Const., Art. VII, § 5, since in either event the tax would be uniform within the district, even though there might be different costs in the operation of the different school units. *Robbins v. Joint Class A. Sch. District. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Former section as amended in 1949 and 1951 providing for discontinuance of attendance units within reorganized districts did not violate Const., Art. IX, § 1 guaranteeing a system of free schools, since amendments promote the principle of home rule by providing for alternative methods for selecting those units which are to be discontinued. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Costs of Suit.

In successful proceeding by electors to mandamus trustees to call an election, the costs should be assessed against the district and not personally against the trustees. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Holding Elections.

School patrons in previously organized school districts were not barred from holding an election concerning abandonment of school units merely because some schoolhouses be-

longing to other organized districts included in reorganized district had been sold and removed. *Knight v. Class A School Dist. No. 2*, 76 Idaho 140, 278 P.2d 991 (1955).

Mandamus.

Mandamus lies to compel trustees to return to proper location schoolhouse moved without authority of electors. *People ex rel. Thompson v. Cothorn*, 36 Idaho 340, 210 P. 1000 (1922).

Mandamus was a proper remedy to require trustees to call an election. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Plaintiffs, who alleged that they were qualified electors in petition to mandamus trustees to call an election, did not have to be the same electors who signed the petition. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Proceedings for writ of mandate were not available to review acts of boards in respect to

matters as to which they were vested with discretion, unless it clearly appeared that they acted arbitrarily and unjustly and in abuse of the discretion vested in them. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

Procedure.

Former section set forth the procedure to be followed when a board of trustees decided to close a school — first the decision to discontinue, then the notice of proposed discontinuance, and then, if petitioned, an election. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

Removal of Grades.

Removal of certain grades from particular attendance unit as result of reorganization was subject to vote of electors in attendance area. *Andrus v. Hill*, 73 Idaho 196, 249 P.2d 205 (1952).

33-512. Governance of schools. — The board of trustees of each school district shall have the following powers and duties:

(1) To fix the days of the year and the hours of the day when schools shall be in session. However:

(a) Each school district shall annually adopt and implement a school calendar which provides its students at each grade level with the following minimum number of instructional hours:

| Grades | Hours |
|--------|-------|
| 9-12 | 990 |
| 4-8 | 900 |
| 1-3 | 810 |
| K | 450 |

(b) School assemblies, testing and other instructionally related activities involving students directly may be included in the required instructional hours.

(c) When approved by a local school board, annual instructional hour requirements stated in paragraph (a) may be reduced as follows:

(i) Up to a total of twenty-two (22) hours to accommodate staff development activities conducted on such days as the local school board deems appropriate.

(ii) Up to a total of eleven (11) hours of emergency school closures due to adverse weather conditions and facility failures.

However, transportation to and from school, passing times between classes, recess and lunch periods shall not be included.

(d) Student and staff activities related to the opening and closing of the school year, grade reporting, program planning, staff meetings, and other classroom and building management activities shall not be counted as instructional time or in the reductions provided in paragraph (c)(i) of this section.

(e) For multiple shift programs, this rule applies to each shift (i.e., each student must have access to the minimum annual required hours of instructions).

(f) The instructional time requirement for grade 12 students may be reduced by action of a local school board for an amount of time not to exceed eleven (11) hours of instructional time.

(g) The state superintendent of public instruction may grant an exemption from the provisions of this section for an individual building within a district, when the closure of that building, for unforeseen circumstances, does not affect the attendance of other buildings within the district.

(2) To adopt and carry on, and provide for the financing of, a total educational program for the district. Such programs in other than elementary school districts may include education programs for out-of-school youth and adults; and such districts may provide classes in kindergarten;

(3) To provide, or require pupils to be provided with, suitable textbooks and supplies, and for advice on textbook selections may appoint a textbook [curricular materials] adoption committee as provided in section 33-512A, Idaho Code;

(4) To protect the morals and health of the pupils;

(5) To exclude from school, children not of school age;

(6) To prescribe rules for the disciplining of unruly or insubordinate pupils, including rules on student harassment, intimidation and bullying, such rules to be included in a district discipline code adopted by the board of trustees and a summarized version thereof to be provided in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student's age, grade and level of academic achievement;

(7) To exclude from school, pupils with contagious or infectious diseases who are diagnosed or suspected as having a contagious or infectious disease or those who are not immune and have been exposed to a contagious or infectious disease; and to close school on order of the state board of health and welfare or local health authorities;

(8) To equip and maintain a suitable library or libraries in the school or schools and to exclude therefrom, and from the schools, all books, tracts, papers, and catechisms of sectarian nature;

(9) To determine school holidays. Any listing of school holidays shall include not less than the following: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. Other days listed in section 73-108, Idaho Code, if the same shall fall on a school day, shall be observed with appropriate ceremonies; and any days the state board of education may designate, following the proclamation by the governor, shall be school holidays;

(10) To erect and maintain on each schoolhouse or school grounds a suitable flagstaff or flagpole, and display thereon the flag of the United States of America on all days, except during inclement weather, when the school is in session; and for each Veterans Day, each school in session shall conduct and observe an appropriate program of at least one (1) class period remembering and honoring American veterans;

(11) To prohibit entrance to each schoolhouse or school grounds, to prohibit loitering in schoolhouses or on school grounds and to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational processes or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils. A person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils or who loiters in schoolhouses or on school grounds, is guilty of a misdemeanor.

(12) To supervise and regulate, including by contract with established entities, those extracurricular activities which are by definition outside of or in addition to the regular academic courses or curriculum of a public school, and which extracurricular activities shall not be considered to be a property, liberty or contract right of any student, and such extracurricular activities shall not be deemed a necessary element of a public school education, but shall be considered to be a privilege.

(13) To govern the school district in compliance with state law and rules of the state board of education.

(14) To submit to the superintendent of public instruction not later than July 1 of each year documentation which meets the reporting requirements of the federal gun-free schools act of 1994 as contained within the federal improving America's schools act of 1994.

(15) To require that all certificated and noncertificated employees hired on or after July 1, 2008, and other individuals who are required by the provisions of section 33-130, Idaho Code, to undergo a criminal history check shall submit a completed ten (10) finger fingerprint card or scan to the department of education no later than five (5) days following the first day of employment or unsupervised contact with students in a K-12 setting, whichever is sooner. Such employees and other individuals shall pay the cost of the criminal history check. If the criminal history check shows that the employee has been convicted of a felony crime enumerated in section 33-1208, Idaho Code, it shall be grounds for immediate termination, dismissal or other personnel action of the district, except that it shall be the right of the school district to evaluate whether an individual convicted of one (1) of these crimes and having been incarcerated for that crime shall be hired. Provided however, that any individual convicted of any felony offense listed in section 33-1208 2., Idaho Code, shall not be hired. For the purposes of criminal history checks, a substitute teacher is any individual who temporarily replaces a certificated classroom educator and is paid a substitute teacher wage for one (1) day or more during a school year. A substitute teacher who has undergone a criminal history check at the request of one (1) district in which he has been employed as a substitute shall not be required to undergo an additional criminal history check at the request of any other district in which he is employed as a substitute if the teacher has obtained a criminal history check within the previous five (5) years. If the district next employing the substitute still elects to require another criminal history check within the five (5) year period, that district shall pay the cost of the criminal history check or reimburse the substitute teacher for such cost. To

remain on the statewide substitute teacher list maintained by the state department of education, the substitute teacher shall undergo a criminal history check every five (5) years.

(16) To maintain a safe environment for students by developing a system that cross-checks all contractors or other persons who have irregular contact with students against the statewide sex offender register.

(17) To provide support for teachers in their first two (2) years in the profession in the areas of: administrative and supervisory support, mentoring, peer assistance and professional development. [1963, ch. 13, § 62, p. 27; am. 1972, ch. 9, § 1, p. 13; am. 1975, ch. 107, § 1, p. 218; am. 1980, ch. 198, § 1, p. 458; am. 1984, ch. 286, § 13, p. 660; am. 1986, ch. 302, § 2, p. 752; am. 1990, ch. 402, § 1, p. 1127; am. 1991, ch. 173, § 1, p. 420; am. 1993, ch. 269, § 1, p. 904; am. 1994, ch. 25, § 2, p. 38; am. 1995, ch. 248, § 3, p. 819; am. 1996, ch. 375, § 2, p. 1273; am. 1999, ch. 219, § 1, p. 584; am. 2000, ch. 335, § 1, p. 1125; am. 2001, ch. 204, § 1, p. 695; am. 2003, ch. 299, § 2, p. 814; am. 2005, ch. 340, § 1, p. 1061; am. 2006, ch. 244, § 3, p. 740; am. 2006, ch. 313, § 2, p. 969; am. 2008, ch. 349, § 2, p. 962.]

STATUTORY NOTES

Cross References. — Arbor day, observance, § 33-1606.

Budgets of district, § 33-801.

Driver training courses, authority to establish, § 33-1704.

Expulsion of pupils, § 33-205.

Fiscal affairs of districts, duties, § 33-701.

Fraternities or sororities, expulsion for membership in, § 33-1903.

General holidays enumerated, § 73-108.

Handicapped pupils, education of, § 33-2001 et seq.

Liability insurance on school buses, § 33-1507.

Libraries, authority to establish, § 33-2601.

School bond issues, authority, § 33-1101 et seq.

School plant facilities reserve fund, authority to establish, § 33-901.

School property, duties with respect to, § 33-601.

School safety patrols, authority to establish, § 33-1801.

Sectarian instruction or books prohibited, § 33-1603.

Superintendent of public instruction, § 67-1501 et seq.

Tax levy, §§ 33-802 — 33-807.

Traveling expenses of board members, payment, § 33-701.

Unmarried mothers, education of, §§ 33-2006 — 33-2008.

Amendments. — This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 244, deleted former subsection (17), which read: "To ensure that each school district, including specially chartered school districts, participates in the Idaho student information management system (ISIMS) to the full extent of its availability. The terms 'Idaho student information management system,' 'appropriate access' and 'real time' shall have such meanings as the terms are defined in section 33-1001, Idaho Code," and redesignated former subsection (18) as (17).

The 2006 amendment, by ch. 313, inserted "including rules on student harassment, intimidation and bullying" in subsection (6).

The 2008 amendment, by ch. 349, in subsection (7), inserted "and welfare"; and rewrote subsections (15) and (16) to the extent that a detailed comparison is impracticable.

Federal References. — The federal gun-free schools act of 1994, referred to in subsection (14), was repealed by Act January 8, 2002, P.L. 107-110, Title 10, § 1011(5)(C). For comparable provisions, see 20 U.S.C.S. § 7151.

Compiler's Notes. — The bracketed provisions in subsection (3) were inserted by the compiler to reflect the amendment of section 33-512A by S.L. 1998, ch. 88, § 4.

The bracketed provisions in subsection (7) were inserted by the compiler to reflect the name change effected by S.L. 1973, ch. 286, § 1 and S.L. 1974, ch. 23, § 47.

Effective Dates. — Section 2 of S.L. 1972, ch. 9 provided the act should take effect on and after July 1, 1972.

JUDICIAL DECISIONS

ANALYSIS

Construction and interpretation.
 Morals and health.
 Negligent supervision.
 Principal's duty.
 Regulation of appearance.
 School district's duty.
 Suicidal tendencies.

Construction and Interpretation.

Language of subsection (11) evidences a legislative purpose of protecting, not prosecuting, pupils, and an interpretation of subsection (11) that criminalizes student misconduct will likely lead to unreasonably harsh results; further, an interpretation that subsection (11) is not intended to apply to public school students achieves the legislative purpose of the statute and avoids the harsh consequences of criminalizing virtually all student or teacher misconduct. *State v. Doe*, 140 Idaho 271, 92 P.3d 521 (2004).

Statutory language of subsection (6) provides public school officials with an effective means of disciplining unruly or disruptive pupils in an administrative fashion, and in appropriate cases, recourse may also be had through various provisions of the criminal code, but there is little need to interpret subsection (11) as providing public school officials additional authority to pursue criminal sanctions against disruptive or detrimental public school students. *State v. Doe*, 140 Idaho 271, 92 P.3d 521 (2004).

Morals and Health.

Injured student's argument that subsection (4) of this section provided some right of relief different from § 6-904A failed when the court examined what the student claimed the school defendants failed to do in order to fulfill their obligations under that section; student maintained that the school defendants failed to provide adequate hallway monitoring, an indisputably supervisory activity. *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

Negligent Supervision.

Where it was undisputed that the persons who injured the plaintiffs' daughter were students under the supervision of the school district, the allegation of negligent supervision of the injured student, rather than her attackers, did not overcome the statutory immunity afforded by § 6-904A, and plaintiff's claim was barred. *Coonse v. Boise Sch. Dist.*, 132 Idaho 803, 979 P.2d 1161 (1999).

Summary judgment was improperly granted to school district in case involving injuries sustained by student while participating in activity run by contractor hired by

district. While school was immune from damages occurring as a result of ordinary negligence in their supervision of student, this immunity did not extend to damages which may have occurred as a result of district's negligent supervision of the contractor. *Sherer v. Pocatello Sch. Dist. # 25*, 143 Idaho 486, 148 P.3d 1232 (2006).

Principal's Duty.

A school principal who called off an ambulance, which, had it not been called off, would have arrived in time to save the life of a student, had a statutory duty to act reasonably in the face of the foreseeable risk of harm to the student, as part of his duty to protect the health of all students for which he was responsible. See *Czaplicki v. Gooding Joint Sch. Dist. No. 231*, 116 Idaho 326, 775 P.2d 640 (1989).

Regulation of Appearance.

A regulation requiring that students in a high school keep their hair length "off the eyes, off the ear, and off the collar" was held unconstitutional when the school authorities failed to show that there was any substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist. No. 25*, 94 Idaho 32, 480 P.2d 878 (1971).

School District's Duty.

A school district has a duty, exemplified in this section, to act affirmatively to prevent foreseeable harm to its students. *Brooks v. Logan*, 127 Idaho 484, 903 P.2d 73 (1995).

There is no statutory duty imposed by this section extending the duty of the school districts to supervise students while traveling home. *Rife v. Long*, 127 Idaho 841, 908 P.2d 143 (1995).

This section does not create a separate tort or a new cause of action beyond the duty of care school districts owe to pupils. *Coonse v. Boise Sch. Dist.*, 132 Idaho 803, 979 P.2d 1161 (1999).

While there might be a common law negligence cause of action based on a duty of care school districts owe to pupils, this section does not create a negligence per se duty. *Hei v. Holzer*, 139 Idaho 81, 73 P.3d 94 (2003).

Suicidal Tendencies.

"Suicidal tendencies" is narrowly defined to mean a present aim, direction, or trend toward taking one's own life; thus, a student's essay, that mentioned he had considered suicide in the past but had no such thoughts now, did not create a duty to warn on the part of his

teacher. *Carrier v. Lake Pend Oreille School Dist.* #84, 142 Idaho 804, 134 P.3d 655 (2006).

Cited in: *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986); *Mickelsen v. School Dist.* No. 25, 127 Idaho 401, 901 P.2d 508 (1995).

OPINIONS OF ATTORNEY GENERAL

All children, even those who have completed a portion of kindergarten prior to moving into Idaho during the school year, must meet the "school age" requirement of turning

five years old prior to the sixteenth day of August in order to be allowed to enroll in an Idaho public school kindergarten. OAG 93-4.

RESEARCH REFERENCES

A.L.R. — Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 A.L.R.3d 996.

Validity of regulation by public school authorities as to clothes or personal appearance of pupils. 14 A.L.R.3d 1201.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 A.L.R.3d 864.

Right to discipline pupil for conduct away from school grounds or not immediately connected with school activities. 53 A.L.R.3d 1124.

Student's right to compel school officials to issue degree, diploma, or the like. 11 A.L.R.4th 1182.

Bible distribution or use in public schools — modern cases. 111 A.L.R. Fed. 121.

33-512A. District curricular materials adoption committees. —

The board of trustees of each school district may appoint a curricular materials adoption committee to advise the board on selection of curricular materials, as defined in section 33-118A, Idaho Code, for use within the schools of the district. Such a committee shall contain a membership at least one-fourth (1/4) of which is persons who are not public educators or school trustees. All meetings of the committee shall be open to the public and any member of the public may attend such a meeting and file written or make oral objections to any curricular materials under consideration. Each school district shall have on hand and available to the public the titles, authors and publishers of all curricular materials being used in the district. The public has the right to inspect the instructional materials, except students' tests, used in the district's schools. [I.C., § 33-512A, as added by 1986, ch. 302, § 3, p. 752; am. 1987, ch. 25, § 1, p. 34; am. 1998, ch. 88, § 4, p. 298.]

33-512B. Suicidal tendencies — Duty to warn. — (1) Notwithstanding the provisions of section 33-512(4), Idaho Code, neither a teacher nor a school district shall have a duty to warn of the suicidal tendencies of a student absent the teacher's knowledge of direct evidence of such suicidal tendencies.

(2) "Direct evidence" means evidence which directly proves a fact without inference and which in itself, if true, conclusively establishes that fact. Direct evidence would include unequivocal and unambiguous oral or written statements by a student which would not cause a reasonable teacher to speculate regarding the existence of the fact in question; it would not

include equivocal or ambiguous oral or written statements by a student which would cause a reasonable teacher to speculate regarding the existence of the fact in question.

(3) The existence of the teacher's knowledge of the direct evidence referred to in subsections (1) and (2) of this section shall be determined by the court as a matter of law. [I.C., § 33-512B, as added by 1996, ch. 377, § 1, p. 1281.]

33-513. Professional personnel. — The board of trustees of each school district including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. Should the board of trustees fail to enter into written contract for the employment of any such person, the state superintendent of public instruction shall withhold ensuing apportionments until such written contract be entered into. When the board of trustees has delivered a proposed contract for the next ensuing year to any such person, such person shall have a period of time to be determined by the board of trustees in its discretion, but in no event less than ten (10) days from the date the contract is delivered, in which to sign the contract and return it to the board. Delivery of a contract may be made only in person or by certified mail, return receipt requested. When delivery is made in person, delivery of the contract must be acknowledged by a signed receipt. When delivery is made by certified mail, delivery must be acknowledged by the return of the certified mail receipt from the person to whom the contract was sent. Should the person willfully refuse to acknowledge receipt of the contract or the contract is not signed and returned to the board in the designated period of time, the board may declare the position vacant.

The board of trustees shall withhold the salary of any teacher who does not hold a teaching certificate valid in this state. It shall not contract to require any teacher to make up time spent in attending any meeting called by the state board of education or by the state superintendent of public instruction; nor while attending regularly scheduled official meetings of the state teachers' association.

2. In the case of school districts other than elementary school districts, to employ a superintendent of schools for a term not to exceed three (3) years, who shall be the executive officer of the board of trustees with such powers and duties as the board may prescribe. The superintendent shall also act as the authorized representative of the district whenever such is required, unless some other person shall be named by the board of trustees to act as its authorized representative. The board of trustees shall conduct an annual, written formal evaluation of the work of the superintendent of the district. The evaluation shall indicate the strengths and weaknesses of the superintendent's job performance in the year immediately preceding the evaluation and areas where improvement in the superintendent's job performance, in the view of the board of trustees, is called for.

3. To employ through written contract principals who shall hold a valid certificate appropriate to the position for which they are employed, who shall supervise the operation and management of the school in accordance with the policies established by the board of trustees and who shall be under the supervision of the superintendent.

4. To employ assistant superintendents and principals for a term not to exceed two (2) years. Service performed under such contract shall be included in meeting the provisions of section 33-515, Idaho Code, as a teacher and persons eligible for a renewable contract as a teacher shall retain such eligibility.

5. To suspend, grant leave of absence, place on probation or discharge certificated professional personnel for a material violation of any lawful rules or regulations of the board of trustees or of the state board of education, or for any conduct which could constitute grounds for revocation of a teaching certificate. Any certificated professional employee, except the superintendent, may be discharged during a contract term under the following procedures:

(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the discharge of any certificated employee by filing with the board of trustees written notice specifying the alleged reasons for discharge.

(b) Upon receipt of such notice the board acting through their duly authorized administrative official, shall give the affected employee written notice of the allegations and the recommendation of discharge, along with written notice of a hearing before the board prior to any determination by the board of the truth of the allegations.

(c) The hearing shall be scheduled to take place not less than six (6) days nor more than twenty-one (21) days after receipt of the notice by the employee. The date provided for the hearing may be changed by mutual consent.

(d) The hearing shall be public unless the employee requests in writing that it be in executive session.

(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board, may administer oaths to witnesses or affirmations by witnesses.

(f) The employee may be represented by legal counsel and/or by a representative of a local or state teachers association.

(g) The chairman of the board or the designee of the chairman shall conduct the hearing.

(h) The board shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board upon request of the employee.

(i) At the hearing the superintendent or other duly authorized administrative officer shall present evidence to substantiate the allegations contained in such notice.

(j) The employee may produce evidence to refute the allegations. Any witness presented by the superintendent or by the employee shall be

subject to cross-examination. The board may also examine witnesses and be represented by counsel.

(k) The affected employee may file written briefs and arguments with the board within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employee and the board.

(l) Within fifteen (15) days following the close of the hearing, the board shall determine and, acting through their duly authorized administrative official, shall notify the employee in writing whether the evidence presented at the hearing established the truth of the allegations and whether the employee is to be retained, immediately discharged, or discharged upon termination of the current contract. [1963, ch. 13, § 71, p. 27; am. 1973, ch. 126, § 1, p. 238; am. 1975, ch. 256, § 1, p. 700; am. 1976, ch. 84, § 1, p. 288; am. 1976, ch. 86, § 2, p. 293; am. 1978, ch. 340, § 3, p. 874; am. 1981, ch. 311, § 1, p. 653; am. 1983, ch. 83, § 1, p. 169; am. 1984, ch. 286, § 8, p. 660; am. 1985, ch. 107, § 3, p. 191; am. 1986, ch. 46, § 1, p. 134; am. 1988, ch. 267, § 1, p. 883; am. 1991, ch. 173, § 2, p. 420.]

STATUTORY NOTES

Cross References. — Drivers for school buses, employment, § 33-1509.

Limitation on authority, § 33-507.

State superintendent of public instruction, § 67-1501 et seq.

Teachers, § 33-1201 et seq.

Effective Dates. — Section 5 of S.L. 1983, ch. 83 declared an emergency. Approved March 28, 1983.

JUDICIAL DECISIONS

ANALYSIS

Assistant superintendent.

Discharge.

Hearing on discharge.

Judicial review.

Probation.

Probationary period.

Suspension.

Voluntary resignation.

Assistant Superintendent.

Since this section sets out a detailed procedure to be followed when a school district seeks to employ professional personnel and teachers can be charged with knowledge of such procedure, assistant superintendent could not enter into a binding contract with teacher on behalf of the board by informing teacher that her name appeared on the school's roster and that roster was tentative only as some teachers might retire or seek a different position, for not only did assistant superintendent lack authority to make such promise, teacher's reliance on such promise was unjustified. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

Discharge.

A school district which discharged a teacher for failure to sign a written contract to teach, failure to register a valid teaching certificate

properly indorsed by the state board of education with the school district, and failure to return to school after termination of a vacation period did not wrongfully discharge the teacher nor defraud him of his right to be employed. *Heine v. School Dist. No. 271*, 94 Idaho 85, 481 P.2d 316 (1971).

School boards are given broad authority to define what constitutes grounds for discharge by promulgation of rules and regulations governing professional conduct of school teachers. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977).

Where a teacher did not contest the fact that there was widespread dissatisfaction with his grading methods, did not contend that he was unaware that this was the reason for his discharge and had, in effect, waived his hearing, the statutory requirement that

teachers be discharged only for cause was satisfied. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977).

A teacher discharged for paddling students when they failed to work blackboard problems was not entitled to be suspended prior to discharge since subsection 5 of this section (former subsection 4) is written in the disjunctive. *Kolp v. Board of Trustees*, 102 Idaho 320, 629 P.2d 1153 (1981).

Hearing on Discharge.

While a board of trustees cannot discharge a teacher except upon its finding of cause as required by subdivision 4 (now 5) of this section, there is no requirement that such cause be established at a hearing unless one is requested by the teacher. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977) (decided prior to 1978 amendment).

A hearing, as referred to in this statute denotes the right to confront witnesses, cross-examine them and present evidence on the teacher's behalf. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977).

Where a teacher wilfully chose not to participate in a hearing concerning his discharge, he waived his right to the hearing contemplated by this statute and by the procedures established by the state board of education. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977) (decided prior to 1978 amendment).

Judicial Review.

Where a teacher seeks a writ of mandate, not for reinstatement during the term of a contract, but to compel continued employment after a first-year contract has expired, judicial review is limited to determining whether the teacher has a clear legal right to the relief sought. The judicial inquiry does not extend to whether the school board acted arbitrarily, unjustly and in abuse of discretion. *Knudson v. Boundary County School Dist. No. 101*, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982).

Probation.

A first-year teacher had no clear legal right to probation as a prerequisite to denial of a contract for the second year. *Knudson v. Boundary County School Dist. No. 101*, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982).

When the legislature amended this section to provide that a probationary period be established for teachers whose work was found to be unsatisfactory, the legislature did not

intend to create a vested right to probation as a prerequisite to denial of a contract for the next school year. Rather, the Legislature intended the probation requirement to be a means of securing compliance by school districts with the mandate for teacher evaluation programs. *Knudson v. Boundary County School Dist. No. 101*, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982) (decided prior to 1984 amendment).

Where teacher was placed on probation in spring of one year, was offered and accepted contract for following year, and, in the spring of that year, was notified that contract would not be renewed, there was substantial competent evidence to support the trial court's implicit finding that the probation established in the spring of the first year was still in effect during the second school year. *Webster v. Board of Trustees*, 104 Idaho 342, 659 P.2d 96 (1983).

Probationary Period.

A teacher who was discharged during a contract term was not entitled to the benefit of a probationary period or an improvement program. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

The probation established under this section is not curtailed as a matter of law by the offer of a new contract; the probation period established by this provision is at minimum to run until the time for reissuing of contracts and the board is not precluded from continuing a probation from one year to another. *Webster v. Board of Trustees*, 104 Idaho 342, 659 P.2d 96 (1983) (decided prior to 1984 amendment).

Suspension.

The board of trustees of the district had the authority under this section to suspend the teacher without pay. *Loftus v. Snake River Sch. Dist.*, 130 Idaho 426, 942 P.2d 550 (1997).

Voluntary Resignation.

Where school district superintendent, as an experienced educator, must have known that his three-year contract could be terminated only for limited, specific reasons but, nonetheless, he turned in his resignation when asked to do so by the school board, his resignation was voluntary and he could not maintain action for wrongful discharge. *Knee v. School Dist. No. 139*, 106 Idaho 152, 676 P.2d 727 (Ct. App. 1984).

Cited in: *Baker v. Independent School Dist.*, 107 Idaho 608, 691 P.2d 1223 (1984); *Gardner v. School Dist. No. 55*, 108 Idaho 434, 700 P.2d 56 (1985); *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989); *Rhoades v. Board of Trustees*, 131 Idaho 827, 965 P.2d 187 (1998).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Nepotism.

Prior contracts.

Teachers.

—Discharge.

—Employment contracts.

Nepotism.

School trustee was pecuniarily interested in contract whereby his wife was employed by board of trustees to teach the school, and such contract was null and void. *Nuckols v. Lyle*, 8 Idaho 589, 70 P. 401 (1902).

Prior Contracts.

Under former statutes requiring electors of school district to vote tax levy for maintenance of school upon trustees' submission of budget setting forth expenditures of preceding year and requirements for ensuing year, the action of the electors of a common school district in voting on annual budget specifying amount to be used for employment of teachers and total amount to be raised by tax levy for ensuing year was binding on trustees with respect to teachers' contracts previously executed. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

It was the duty of trustees to enter into contracts with teachers; but contracts entered into prior to the annual meeting were made subject to the statute which became part of it, giving the electors, when they met, power to modify as to wages and the length of the school year. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

Teachers.

—Discharge.

Trustees of independent school district, unlike those of an ordinary school district, had unlimited power to dismiss teacher either with or without notice, and exercise of that power was not subject to review or control by courts. *Ewin v. Independent School Dist. No. 8*, 10 Idaho 102, 77 P. 222 (1904); *Hermann v. Independent School Dist. No. 1*, 24 Idaho 554, 135 P. 1159 (1913).

Before teacher of ordinary school district could be removed by trustees, he had to be

given notice and opportunity to be heard in his defense. *Ewin v. Independent School Dist. No. 8*, 10 Idaho 102, 77 P. 222 (1904).

Motive and purpose of board of school trustees in discharging teacher under the former section could not be put in issue in action for damages under the charge of civil libel. *Barton v. Rogers*, 21 Idaho 609, 123 P. 478 (1912).

Board had power to discharge teacher for breach of contract or continued neglect of duty and such discharge in good faith was good defense to action for damages resulting from such discharge. *Hayes v. Independent School Dist. No. 9*, 45 Idaho 464, 262 P. 862 (1928).

—Employment Contracts.

Board of trustees and not superintendent of schools or clerk of district had power to contract or deal with teachers in the matter of employment. *Hermann v. Independent School Dist. No. 1*, 24 Idaho 554, 135 P. 1159 (1913).

Contract form sent to teacher by school trustees and signed and returned by him did not, under the evidence, constitute a contract of employment as district school superintendent. *Ware v. Independent School Dist. No. 3*, 55 Idaho 510, 44 P.2d 1097 (1935).

The board was empowered to employ teachers; its contracts were those of the board and not the individual members and it could make a valid contract with a teacher for a term of school to begin the ensuing school year after the term of one of the trustees had expired. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

Annual budget and tax levy fixed by electors of a common school district and specifying amount to be used for employment of teachers was binding on the trustees with respect to teachers' contracts previously executed. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

RESEARCH REFERENCES

A.L.R. — What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 A.L.R.3d 1090.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 A.L.R.3d 754.

Dismissal of, or disciplinary action against,

public school teachers for violation of regulation as to dress or personal appearances of teachers. 58 A.L.R.3d 1227.

Right of schoolteacher to serve as member of school board in same school district where employed. 70 A.L.R.3d 1188.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching

certificate. 78 A.L.R.3d 19.

What constitutes "insubordination" as ground for dismissal of public school teacher. 78 A.L.R.3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 A.L.R.3d 117.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 A.L.R.4th 301.

Who may be included in "unit appropriate" for collective bargaining at school or college, under § 9(b) of National Labor Relations Act (29 USCS § 159(b)). 46 A.L.R. Fed. 580.

33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement. — (1) The board of trustees shall establish criteria and procedures for the supervision and evaluation of certificated employees who are not employed on a renewable contract, as provided for in section 33-515, Idaho Code.

(2) There shall be three (3) categories of annual contracts available to local school districts under which to employ certificated personnel:

(a) A category 1 contract is a limited one-year contract as provided in section 33-514A, Idaho Code.

(b) A category 2 contract is for certificated personnel in the first and second years of continuous employment with the same school district. Upon the decision by a local school board not to reemploy the person for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than May 25. No property rights shall attach to a category 2 contract and therefore the employee shall not be entitled to a review by the local board of the reasons or decision not to reemploy.

(c) A category 3 contract is for certificated personnel during the third year of continuous employment by the same school district. District procedures shall require at least one (1) evaluation prior to the beginning of the second semester of the school year and the results of any such evaluation shall be made a matter of record in the employee's personnel file. When any such employee's work is found to be unsatisfactory a defined period of probation shall be established by the board, but in no case shall a probationary period be less than eight (8) weeks. After the probationary period, action shall be taken by the board as to whether the employee is to be retained, immediately discharged, discharged upon termination of the current contract or reemployed at the end of the contract term under a continued probationary status. Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho Code, a decision to place certificated personnel on probationary status may be made in executive session and the employee shall not be named in the minutes of the meeting. A record of the decision shall be placed in the employee's personnel file. This procedure shall not preclude recognition of unsatisfactory work at a subsequent evaluation and the establishment of a reasonable period of probation. In all instances, the employee shall be duly notified in writing of the areas of work which are deficient, including the conditions of probation. Each such certificated employee on a category 3 contract shall be given notice, in writing, whether he or she will be reemployed for the next ensuing year. Such notice shall be given by the board of trustees no later than the twenty-fifth day of May of each such year. If the board of trustees has decided not to reemploy the certificated employee, then the

notice must contain a statement of reasons for such decision and the employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board.

(3) School districts hiring an employee who has been on renewable contract status with another Idaho district or has out-of-state experience which would otherwise qualify the certificated employee for renewable contract status in Idaho, shall have the option to immediately grant renewable contract status, or to place the employee on a category 3 annual contract. Such employment on a category 3 contract under the provisions of this subsection may be for one (1), two (2) or three (3) years.

(4) There shall be a minimum of two (2) written evaluations in each of the annual contract years of employment, and at least one (1) evaluation shall be completed before January 1 of each year. The provisions of this subsection (4) shall not apply to employees on a category 1 contract. [I.C., § 33-514, as added by 1984, ch. 286, § 9, p. 660; am. 2000, ch. 66, § 1, p. 147; am. 2005, ch. 340, § 2, p. 1061.]

JUDICIAL DECISIONS

ANALYSIS

Due process.
Nonrenewal.
Notice.
Performance defined.
Probationary period.
Procedural requirements.

Due process.

Although the requirement of notice of this section with regard to renewable contract teachers is a means of providing procedural due process, nontenured teachers have not been found to have a "property" interest in continued employment. Therefore, nontenured teacher was not entitled to procedural due process and the analysis of her case was confined to an application of this section. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

Nonrenewal.

A school district which elects not to renew a teacher's contract on the basis of unsatisfactory performance must first place that teacher on probation pursuant to this section. *Gunter v. Board of Trustees*, 123 Idaho 910, 854 P.2d 253 (1993).

Under this section, probation is not required every time an annual contract teacher is not reemployed. There are circumstances unrelated to performance deficiencies which would allow a school board to make a decision not to reemploy without implicating the statutory probation requirement. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

Although school district believed it could

hire someone better than plaintiff did not necessarily mean that her work was unsatisfactory; however, if a performance deficiency in a teacher is such that it affects whether he or she will be reemployed, this section requires that that teacher be placed on probation. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

The requirement of this section that a statement of reasons for the decision not to reemploy be included in the notice was included to provide a teacher with the means to develop a meaningful response to an adverse decision by a board of trustees; thus, the statement of reasons provided by the board in this case was in violation. The board essentially informed teacher that its decision was based on the belief that the district would be better off without her, but did not really convey any real information as to why plaintiff's contract was not renewed and thus, plaintiff was given no meaningful opportunity to show why the decision was incorrect. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

An annual contract teacher does not have any expectation of continued employment, since the contract is annual and nonrenewable in nature. Plaintiff completed her con-

tract term in full and, thus, could not have been "terminated." *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 918 P.2d 583 (1996).

Because the superintendent of a teacher's school district, instead of the board of trustees, informed the teacher that the district did not intend to reemploy her for the coming year, the board of trustees failed to take action as required by this section, and the teacher was entitled to be treated as though she had been reemployed for that year. *Rhoades v. Board of Trustees*, 131 Idaho 827, 965 P.2d 187 (1998).

The language of this section did not obligate a school district to renew a teacher's contract where the teacher was an annual contract teacher who had served fewer than three years in the same school district. *Kingsbury v. Genesee Sch. Dist. No. 282*, 132 Idaho 791, 979 P.2d 1149 (1999).

Notice.

The notification date set forth in the Professional Agreement of not later than May 15th was not in conflict with the express language of this section, which requires notification no later than June 15th [now May 25th]. This section does not expressly or impliedly preclude school districts from agreeing to provide notice earlier than June 15th. *Hunting v. Clark County Sch. Dist. No. 161*, 129 Idaho 634, 931 P.2d 628 (1997).

Performance Defined.

For purposes of this section "performance" is merely the means by which a teacher's

"work" is evaluated and vice versa; any attempt at drawing a distinction between "work" and "performance" is "splitting hairs." *Gunter v. Board of Trustees*, 123 Idaho 910, 854 P.2d 253 (1993).

Probationary Period.

Whether a 26 day period of probation was reasonable is an issue of material fact. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 918 P.2d 583 (1996).

The only requirement under this section regarding probation is that if an employee's work is unsatisfactory he must be placed on probation for a reasonable period of time before he can be terminated. There is nothing in this section that requires that the contract of an annual contract teacher who has successfully completed a probationary period be renewed. *Kingsbury v. Genesee Sch. Dist. No. 282*, 132 Idaho 791, 979 P.2d 1149 (1999).

Procedural Requirements.

The procedural requirements of this section were met where plaintiff was given notice of her right to an informal hearing and was given an opportunity to be heard. No adjudicative hearing or formal review is required by this section. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 918 P.2d 583 (1996).

Cited in: *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

33-514A. Issuance of limited contract — Category 1 contract. — After August 1, the board of trustees may exercise the option of employing certified personnel on a one (1) year limited contract, which may also be referred to as a category 1 contract consistent with the provisions of section 33-514, Idaho Code. Such a contract is specifically offered for the limited duration of the ensuing school year, and no further notice is required by the district to terminate the contract at the conclusion of the contract year. [I.C., § 33-514A, as added by 1997, ch. 125, § 1, p. 374; am. 2000, ch. 66, § 2, p. 147.]

33-515. Issuance of renewable contracts. — During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection (16) of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, having given notice of acceptance of renewal and upon signing a contract for a fourth full year, be placed on a renewable contract status with said school district subject to the provisions included in this chapter.

After the third full year of employment and at least once annually, the performance of each such certificated employee, school nurse, or school

librarian shall be evaluated according to criteria and procedures established by the board of trustees in accordance with general guidelines approved by the state board of education. Except as otherwise provided, that person shall have the right to automatic renewal of contract by giving notice, in writing, of acceptance of renewal. Such notice shall be given to the board of trustees of the school district then employing such person not later than the first day of June preceding the expiration of the term of the current contract. Except as otherwise provided by this paragraph, the board of trustees shall notify each person entitled to be employed on a renewable contract of the requirement that such person must give the notice hereinabove and that failure to do so may be interpreted by the board as a declination of the right to automatic renewal or the offer of another contract. Such notification shall be made, in writing, not later than the fifteenth day of May, in each year, except to those persons to whom the board, prior to said date, has sent proposed contracts for the next ensuing year, or to whom the board has given the notice required by this section.

Any contract automatically renewed under the provisions of this section shall be for the same length as the term stated in the current contract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, service, or performance.

Nothing herein shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

Before a board of trustees can determine not to renew for reasons of an unsatisfactory report of the performance of any certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose

contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, reduce the salary or not renew the contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require a probationary period. [1963, ch. 13, § 154, p. 27; am. 1973, ch. 126, § 2, p. 238; am. 1981, ch. 140, § 1, p. 242; am. 1982, ch. 86, § 1, p. 159; am. 1983, ch. 83, § 2, p. 169; am. 1983, ch. 212, § 1, p. 588; am. and redesign. 1984, ch. 286, § 10, p. 660; am. 1988, ch. 118, § 2, p. 217; am. 1999, ch. 208, § 1, p. 556; am. 2000, ch. 264, § 1, p. 740; am. 2000, ch. 266, § 4, p. 743; am. 2003, ch. 299, § 5, p. 814; am. 2006, ch. 244, § 4, p. 740.]

STATUTORY NOTES

Amendments. — This section was amended by two 2000 acts — ch. 264, § 1 and ch. 266, § 4, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 264, § 1, in the first paragraph substituted “subsection 13.” for “subsection 13”; in the second paragraph substituted “first day of June” for “fifteenth day of June”; and substituted “fifteenth day of May” for “twenty-fifth day of May”.

The 2000 amendment, by ch. 266, § 4, substituted “subsection 16.” for “subsection 13” in the first paragraph.

The 2006 amendment, by ch. 244, updated the subsection reference in the first paragraph.

Legislative Intent. — Section 3 of S.L. 1984, ch. 286 read: “It is legislative intent

that local school districts be encouraged to provide opportunities for a person certified as a consultant specialist to be employed by the school district on a part-time basis. In addition, the local school districts are encouraged to provide opportunities for teachers to become involved in dual careers of education-business or education-government without affecting the teacher’s renewable contract status as provided in section 33-515, Idaho Code.”

Compiler’s Notes. — This section was formerly compiled as § 33-1212.

Effective Dates. — Section 2 of S.L. 1982, ch. 86 declared an emergency. Approved March 17, 1982.

Section 2 of S.L. 1983, ch. 212 declared an emergency. Approved April 13, 1983.

Section 3 of S.L. 1999, ch. 208 declared an emergency. Approved March 23, 1999.

JUDICIAL DECISIONS

ANALYSIS

Binding contract.

Board’s scope of inquiry.

Collective bargaining agreement.

Continuing contract.

Discharge hearing.

Due process.

Effect of declining renewal.

Failure to renew.

Legislative intent.

Dismissal.

— Reasons.

Reasons other than satisfactory service.

Recommendations by superintendent.
Superintendent.

Binding Contract.

Nothing in this section denies a school district the power to limit its power over administrators by adopting a policy restricting its statutory discretion, and where district did so when it adopted policy and incorporated it into principal's contract, there was no conflict or ambiguity, and thus principal had a property right in the principalship that could be ended only in conformity with the criteria set out in district's policy, and when without notice, without hearing and without evaluation he lost his principal's appointment, he was denied the process of law due him in terms of his contract and the policy of the district. *Peterson v. Minidoka County Sch. Dist.* No. 331, 118 F.3d 1351 (9th Cir. 1997).

Board's Scope of Inquiry.

In discharging a teacher with renewable contract rights during a contract term, the school board's scope of inquiry is not limited to the teacher's conduct during that term. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

Collective Bargaining Agreement.

The fact that the terms of a collective bargaining agreement may not be settled and reduced to a written binding contract at the time of the proffering of individual teacher contracts is immaterial, since the school boards and teachers may offer and accept employment subject to the terms of a collective bargaining agreement yet to be agreed upon by the parties. *Buhl Educ. Ass'n v. Joint School Dist.* No. 412, 101 Idaho 16, 607 P.2d 1070 (1980).

A school board, currently engaged in collective bargaining negotiations, or in mediation, with the association representing its teachers may send out binding individual contracts to teachers as required by statute, and those contracts become and are modified by applicable provisions of the agreement which, thereafter, results from negotiations and mediation which were timely brought and ongoing when the individual contracts were entered into. *Buhl Educ. Ass'n v. Joint School Dist.* No. 412, 101 Idaho 16, 607 P.2d 1070 (1980).

Continuing Contract.

Although a teacher's contract by its provisions covered a definite term, and in a sense, except for the statutory renewal provisions, would expire at the termination date, in actuality, however, by application of the statutory law, the contract together with the statute is better called a "continuing contract," that can only be terminated by the school district for cause. *Robinson v. Joint School Dist.* No. 150,

100 Idaho 263, 596 P.2d 436 (1979).

Discharge Hearing.

A teacher with renewable contract rights is entitled to a discharge hearing before an appropriately neutral board of trustees. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

Due Process.

The district court did not err in concluding that the school district violated this section by terminating renewable contract teachers' extra day assignments without following statutory procedures, because the notice and hearing requirements of the section apply to all terminations and salary reductions, not just those based on unsatisfactory job performance. *Lowder v. Minidoka County Joint Sch. Dist.*, 132 Idaho 834, 979 P.2d 1192 (1999).

Effect of Declining Renewal.

Where on February 27 teacher advised school board in writing that he would decline to accept employment during the next school year, but where on March 30 teacher advised the board of his desire to withdraw the declaration of future employment, teacher, whose contract was not renewed, was precluded by board's defenses of estoppel and waiver from obtaining a reinstatement of employment and lost wages and therefore summary judgment for the school board was proper. *Gardner v. Hollifield*, 97 Idaho 607, 549 P.2d 266 (1976).

Failure to Renew.

A teacher's service of over three full years of continuous employment by the same school district conferred upon her the right of automatic renewal as part and parcel of her contract, and, unless the statutory procedures were properly followed, the failure to renew her contract was a breach of that continuing contract. *Robinson v. Joint School Dist.* No. 150, 100 Idaho 263, 596 P.2d 436 (1979).

The language of section 33-514 did not obligate a school district to renew a teacher's contract where the teacher was an annual contract teacher who had served fewer than three years in the same school district. *Kingsbury v. Genesee Sch. Dist.* No. 282, 132 Idaho 791, 979 P.2d 1149 (1999).

Legislative Intent.

Nowhere has the legislature expressly prohibited a school board from agreeing to arbitrate a contract dispute as to either interpretation or procedures of implementing the contract, nor has it statutorily excluded negotiation of administration of reduction-in-force provisions. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

Dismissal.**—Reasons.**

Inasmuch as a teacher with renewable contract rights had a property interest entitled to procedural due process protection, the teacher was entitled to know the reasons for his dismissal. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

Reasons Other Than Satisfactory Service.

Where the reasons for nonrenewal of the teacher's contract were reduced enrollment and budget problems, such reasons were "reasons other than unsatisfactory service," within the meaning of this section. *Baker v. Independent School Dist.*, 107 Idaho 608, 691 P.2d 1223 (1984).

Recommendations by Superintendent.

Where school superintendent had advised school board that plaintiff "was incompetent as a school teacher and not doing a competent job," plaintiff's allegations that superintendent knew that his statement concerning in-

competence was false presented material issues of fact which precluded summary judgment in plaintiff's action for damages for defamation. *Gardner v. Hollifield*, 97 Idaho 607, 549 P.2d 266 (1976).

Superintendent.

A superintendent has no renewable contract rights and serves in that capacity at the pleasure of the school board, whose discretion is limited only by the superintendent's contract and by the board's adherence to anti-discrimination statutes. *Gardner v. School Dist. No. 55*, 108 Idaho 434, 700 P.2d 56 (1985).

Cited in: *Gardner v. Hollifield*, 96 Idaho 609, 533 P.2d 730 (1975); *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971 (1977); *Heaney v. Board of Trustees*, 98 Idaho 900, 575 P.2d 498 (1978); *Kolp v. Board of Trustees*, 102 Idaho 320, 629 P.2d 1153 (1981); *Knudson v. Boundary County School Dist. No. 101*, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982); *Webster v. Board of Trustees*, 104 Idaho 342, 659 P.2d 96 (1983).

RESEARCH REFERENCES

A.L.R. — Construction and effect of tenure provisions of contract or statute governing employment of faculty member by college or university. 66 A.L.R.3d 1018.

Who is "teacher" for purposes of tenure

statute. 94 A.L.R.3d 141.

Sufficiency of notice of intention to discharge teacher, or not to rehire under statutes requiring such notice. 52 A.L.R.4th 301.

33-515A. Supplemental contracts. — (1) In addition to the provisions of sections 33-514, 33-514A and 33-515, Idaho Code, a board of trustees may enter into supplemental contracts to provide extra duty assignments for certificated employees. An extra duty assignment is, and supplemental contracts may be used for, an assignment which is not part of a certificated employee's regular teaching duties. Any such contract shall be separate and apart from an annual, a renewable or a limited one (1) year contract, and no property rights shall attach to a supplemental contract. The contract shall be in a form approved by the state superintendent of public instruction.

(2) If a board of trustees determines not to reissue a supplemental contract, the board shall give written notice to the employee describing reasons for the decision not to reissue. The employee, upon written request to the board, shall be entitled to an informal review. The process and procedure for the informal review shall be determined by the local board of trustees. Within fifteen (15) days following the meeting with the employee, the board shall notify the employee of its final decision in the matter. Should a school district provide for additional procedures, nothing in this statute shall be interpreted to limit those procedures. [I.C., § 33-515A, as added by 1999, ch. 208, § 2, p. 556.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq. ch. 208 declared an emergency. Approved March 23, 1999.

Effective Dates. — Section 3 of S.L. 1999,

33-516. Right to renewable contract when district is divided, consolidated or reorganized. — If, by reason of the division of a school district, including any specially chartered district, or by reason of the consolidation of such a district with another district, or other districts, or by reason of the reorganization of such a district, the position held by any teacher entitled to a renewable contract is transferred from the control of one board of trustees to the control of a new or different board of trustees, the right to automatic renewal is not thereby lost, and such new or different board of trustees shall be subject to all of the provisions of this chapter with respect to such teacher in the same manner as if such teacher were its employee and had been its employee during the time such teacher was actually employed by the board of trustees from whose control the position was transferred. [I.C., § 33-1212A, as added by 1973, ch. 126, § 3, p. 238; am. and redesisg. 1984, ch. 286, § 11, p. 660.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-1212A.

33-517. Noncertificated personnel. — The board of trustees of each school district including any specially chartered district, shall have the following powers and duties:

(1) To provide that hiring and evaluation procedures for noncertificated personnel shall be in writing and shall be available for any noncertificated employee's review at anytime. Job descriptions for all noncertificated employees shall be written and shall be made available to employees of the district or other people seeking employment.

(2) To provide a grievance procedure for noncertificated employees of the district which meets the minimum standards of paragraphs (a) through (i) of this subsection. In the event a grievance procedure is not provided, the following grievance procedure shall apply.

(a) A grievance shall be defined as a written allegation of unfair treatment or a violation of school district policy. A noncertificated employee of the district may file a grievance about any matter related to his employment, provided that neither the rate of salary or wage of the employee nor the decision to terminate an employee for cause during the initial one hundred eighty (180) days of employment shall be a proper subject for consideration under the grievance procedure provided in this section.

(b) If a noncertificated employee files a grievance, the employee shall submit the grievance in writing to his or her immediate supervisor within six (6) working days of the incident giving rise to the grievance. The grievance shall state the nature of the grievance and the remedy sought.

Within six (6) working days of receipt of the grievance, the immediate supervisor shall provide a written response to the employee.

(c) If the noncertificated employee is not satisfied with the response of the immediate supervisor or if there is no response within the time lines, the employee may appeal the grievance to the superintendent of the district or the superintendent's designee within five (5) working days of the receipt of the response as set out in subsection (2)(b) of this section or within five (5) working days from the date the supervisor last had to respond if the noncertificated employee received no written response. Within six (6) working days of an appeal, the superintendent or his designee shall communicate with the noncertificated employee in an effort to resolve the appeal. Within five (5) working days of the communication, the superintendent or his designee shall provide a written response to the noncertificated employee.

(d) If the noncertificated employee is not satisfied with the response of the superintendent or his designee, or if there is no response by the superintendent or his designee within the time frame provided in subsection (2)(c) of this section, the noncertificated employee may request a review of the grievance by a hearing panel within five (5) working days from receipt of the response provided in subsection (2)(c) of this section if the employee received a written response, or five (5) working days from the date the superintendent last had to respond if the noncertificated employee received no written response. Within ten (10) working days of receipt of an appeal, the board of trustees shall convene a panel consisting of three (3) persons; one (1) designated by the board of trustees, one (1) designated by the employee, and one (1) agreed upon by the two (2) appointed members for the purpose of reviewing the appeal. Within five (5) working days following completion of the review, the panel shall submit its decision in writing to the noncertificated employee, the superintendent, and the board of trustees.

(e) The panel's decision shall be the final and conclusive resolution of the grievance unless the board of trustees overturns the panel's decision by resolution at the board of trustees' next regularly scheduled public meeting or unless within forty-two (42) calendar days of the filing of the board's decision, either party appeals to the district court in the county where the school district is located. Upon appeal of a decision of the board of trustees, the district court may affirm or set aside and remand the matter to the board of trustees upon the following grounds, and shall not set the same aside on any other grounds:

- (i) That the findings of fact are not based on any substantial, competent evidence;
- (ii) That the board of trustees has acted without jurisdiction or in excess of its powers;
- (iii) That the findings by the board of trustees as a matter of law do not support the decision.

(f) A noncertificated employee filing a grievance pursuant to this section shall be entitled to a representative of the employee's choice at each step of the grievance procedure provided in this section. The supervisor,

superintendent, or the superintendent's designee shall be entitled to a representative at each step of the grievance procedure.

(g) The time lines of the grievance procedure established in this section may be waived or modified by mutual agreement.

(h) Utilization of the grievance procedure established pursuant to this section shall not constitute a waiver of any right of appeal available pursuant to law or regulation.

(i) Neither the board nor any member of the administration shall take reprisals affecting the employment status of any party in interest.

(j) A noncertificated employee of a school district shall be required to review and sign any entries made to his personnel file. At reasonable times and places, in the presence of an appropriate district official, a noncertificated employee may inspect documents contained in his official personnel file. [I.C., § 33-517, as added by 1989, ch. 195, § 1, p. 490.]

JUDICIAL DECISIONS

ANALYSIS

Private right of action.

Statutory procedures mandatory.

Private Right of Action.

There is no legislative history indicating an intent to create a private tort action and there is nothing within the act itself which indicates the need for a private tort action to fulfill the purpose of the act; therefore, this section does not create a private tort right of action. *Brock v. Board of Dirs.*, 134 Idaho 520, 5 P.3d 981 (2000).

Statutory Procedures Mandatory.

The grievance procedure contained in this section provides a multi-step process by

which a non-certificated employee may appeal matters related to his or her employment, and where the board did not provide the employee with a meaningful opportunity to be heard in a fair and impartial manner, it also necessarily failed to comply with the statutory procedures set forth in subsection (2) and, as a result, the board exceeded its authority in terminating the employee. *Roberts v. Board of Trustees*, 134 Idaho 890, 11 P.3d 1108 (2000).

33-517A. School districts — Noncertificated employees — Group health insurance. — The board of trustees of each school district, including any specially chartered district, shall provide the same group health insurance benefits to all noncertificated employees who work twenty (20) hours or more per week, as provided to certificated employees. [I.C., § 33-517A, as added by 1994, ch. 282, § 1, p. 883.]

33-518. Employee personnel files. — The board of trustees of each school district, including any specially chartered district, shall provide for the establishment and maintenance of a personnel file for each employee of the school district. Each personnel file shall contain any and all material relevant to the evaluation of the employee. The employee shall be provided timely notice of all materials placed in the personnel file and shall be afforded the opportunity to attach a rebuttal to any such materials. Personnel files are declared to be confidential and excepted from public access under any provision of the Idaho Code, including, but not limited to, sections 9-301 [repealed] and 59-1009 [repealed], Idaho Code, provided that each employee or designated representative shall be given access to his own

personnel file upon request and shall be provided copies of materials contained therein, with the exception of recommendation letters, in a timely manner upon request. [I.C., § 33-518, as added by 1990, ch. 418, § 1, p. 1156.]

STATUTORY NOTES

Compiler's Notes. — Sections 9-301 and 59-1009, referred to in this section, were repealed by S.L. 1990, ch. 213, § 2. For present comparable provisions, see § 9-337 et seq.

33-519. Release for religious instruction. — Upon application of his parent or guardian, or, if the student has attained the age of eighteen (18) years, upon application of the student, a student attending a public school in grades nine (9) through twelve (12) may be excused from school for a period not exceeding five (5) periods in any week and not exceeding one hundred sixty-five (165) hours per student during any one (1) school year for religious or other purposes. Release time pursuant to this section shall be scheduled by the board of trustees upon application as provided herein and the board shall have reasonable discretion over the scheduling and timing of the release time. Release time pursuant to this section shall not reduce the minimum graduation requirements for accredited Idaho high schools. The provisions of this section shall not be deemed to authorize the use of any public school facility for religious instruction. The board of trustees of a school district may not authorize the use of, and public school facilities, personnel or equipment may not be utilized, to maintain attendance records for the benefit of release time classes for religious instruction. No credit shall be awarded by the school or school district for completion of courses during release time for religious purposes. At the discretion of the board credit may be granted for other purposes. [I.C., § 33-519, as added by 1991, ch. 250, § 1, p. 618.]

33-520. Policy governing medical inhalers or epinephrine auto-injectors. — (1) The board of trustees of each school district, including charter districts, shall adopt a policy by September 1, 2008, permitting the self-administration of medication administered by way of a metered-dose inhaler by a pupil for asthma or other potentially life-threatening respiratory illness or by way of an epinephrine auto-injector for severe allergic reaction (anaphylaxis).

(2) As used in this section:

(a) "Medication" means an epinephrine auto-injector, a metered-dose inhaler or a dry powder inhaler prescribed by a physician and having an individual label; and

(b) "Self-administration" means a student's use of medication pursuant to prescription or written direction from a physician.

(3) A student who is permitted to self-administer medication pursuant to this section shall be permitted to possess and use a prescribed inhaler or epinephrine auto-injector at all times.

(4) Nothing in this section shall be construed to prevent a school district from requiring pupils to maintain current duplicate prescription medica-

tions with the school nurse or, in the absence of such nurse, with the school administrator. [I.C., § 33-520, as added by 2004, ch. 336, § 1, p. 1006; am. 2008, ch. 305, § 1, p. 846.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 305, in the section catchline, added “or epinephrine auto-injectors”; in subsection (1), added “or by way of an epinephrine auto-injector for severe allergic reaction (anaphylaxis)”; in paragraph (2)(a), inserted “an epinephrine auto-injector” and deleted “to alleviate asthmatic symptoms” following “powder inhaler”; and in subsection (3), deleted “asthma” preceding “medication” and inserted “or epinephrine auto-injector.”

Effective Dates. — Section 2 of S.L. 2004, ch. 336 declared an emergency. Approved March 24, 2004.

33-521. Employee severance in consolidated district. — The board of trustees of any school district newly formed within the last twelve (12) months through the consolidation of two (2) or more school districts may offer a one (1) time severance payment to a maximum of ten percent (10%) of the employees that were previously employed by the separate school districts. Such severance offers shall be made entirely at the discretion of the board of trustees, and shall not be bound by custom, seniority or contractual commitment. Employees are under no obligation to accept a severance offer. Any employee accepting a severance payment shall not be eligible for reemployment by the school district for a one (1) year period thereafter.

The severance payment shall consist of fifty-five percent (55%) of the salary-based apportionment funds allocated for the employee in the last year, plus any applicable state paid employee benefits. Such severance shall be reduced by one-half (1/2) for any employee who is simultaneously receiving a disbursement of early retirement incentive funds, pursuant to section 33-1004G, Idaho Code. The state department of education shall reimburse eligible school districts for one hundred percent (100%) of such costs, upon application by the school district. [I.C., § 33-521, as added by 2007, ch. 79, § 3, p. 209.]

STATUTORY NOTES

Effective Dates. — Section 8 of S.L. 2007, January 1, 2007 and approved March 14, ch. 79 declared an emergency retroactively to 2007.

CHAPTER 6

SCHOOL PROPERTY

| | |
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| SECTION. | SECTION. |
| 33-601. Real and personal property — Acquisition, use or disposal of same. | 33-602. Use of school property or buildings for senior citizen centers. |
| 33-601A. Leasing of goods, equipment, buses and portable classrooms. | 33-603. Payment of fees or returning of property. |

33-601. Real and personal property — Acquisition, use or disposal of same. — The board of trustees of each school district shall have the following powers and duties:

(1) To rent to or from others, school buildings or other property used, or to be used, for school purposes.

(2) To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in section 33-118A, Idaho Code, such contract shall be executed in accordance with the provisions of chapter 28, title 67, Idaho Code.

(3) To designate and purchase any real property necessary for school purposes or in the operation of the district, or remove any building, or dispose of any real property. Prior to, but not more than one (1) year prior to, any purchase or disposal of real property, the board shall have such property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

(4)(a) To convey, except as provided by paragraph (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection (6) of this section, any of the transactions authorized in this subsection shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised pursuant to this section, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections g. and h. of section 33-402, Idaho Code, except that when the appraised value of the property is less than one thousand dollars (\$1,000), one (1)

single notice by publication shall be sufficient and the property shall be sold by sealed bids or at public auction.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property. In no case shall any real property of the school district be sold for less than its appraisal.

The board of trustees may sell personal property, with an estimated value of less than one thousand dollars (\$1,000), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property. If the property has an estimated value of less than five hundred dollars (\$500), the property may be disposed of in the most cost-effective and expedient manner by an employee of the district empowered for that purpose by the board, provided however, such employee shall notify the board prior to disposal of said property.

(b) Real and personal property may be exchanged hereunder for other property. Provided, however, that aside from the provisions of this paragraph, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any other school district, the Idaho housing and finance association, any public charter school, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made. Prior to any transfer or conveyance of any real or personal property pursuant to this paragraph (4)(b), the board shall have the property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real or personal property.

(5) To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

(6) To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to authorize the removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

(7) To authorize the use of any school building of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

(8) To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in section 7-701, Idaho Code.

(9) If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section. [1963, ch. 13, § 70, p. 27; am. 1967, ch. 73, § 1, p. 167; am. 1972, ch. 39, § 1, p. 61; am. 1973, ch. 14, § 1, p. 29; am. 1974, ch. 140, § 1, p. 1353; am. 1975, ch. 109, § 1, p. 222; am. 1978, ch. 165, § 1, p. 361; am. 1979, ch. 120, § 1, p. 370; am. 1980, ch. 120, § 1, p. 259; am. 1981, ch. 143, § 1, p. 246; am. 1982, ch. 87, § 1, p. 160; am. 1983, ch. 111, § 1, p. 238; am. 1984, ch. 45, § 1, p. 72; am. 1992, ch. 237, § 1, p. 705; am. 1998, ch. 88, § 5, p. 298; am. 2000, ch. 345, § 1, p. 1167; am. 2001, ch. 191, § 1, p. 654; am. 2003, ch. 264, § 1, p. 699; am. 2004, ch. 219, § 1, p. 655; am. 2005, ch. 213, § 5, p. 637; am. 2006, ch. 228, § 1, p. 680; am. 2008, ch. 191, § 1, p. 598; am. 2008, ch. 307, § 1, p. 853.]

STATUTORY NOTES

Cross References. — Avoidance of procurement and competitive bidding statutes, § 59-1026.

School bonds, § 33-1101 et seq.

School plant facilities reserve fund, § 33-901.

State board for professional-technical education authorized to own property, §§ 33-2202, 33-2211.

State board of education authorized to own real and personal property, § 33-107.

Transfer of real or personal property to another unit of government, §§ 67-2322 — 67-2325.

Amendments. — The 2006 amendment, by ch. 228, in the last sentence of the last paragraph of subsection (4)(a), deleted “board, by a unanimous vote of those members present, finds that the” preceding the first occurrence of “property” and “and is of insuf-

ficient value to defray the costs of arranging a sale” following “five hundred dollars (\$500),” and added the proviso at the end.

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 191, in the second sentence in subsection (4)(b), inserted “any public charter school.”

The 2008 amendment, by ch. 307, inserted “the Idaho housing and finance association” near the middle in subsection (4)(b).

Effective Dates. — Section 2 of S.L. 1967, ch. 73 declared an emergency. Approved March 8, 1967.

Section 2 of S.L. 1974, ch. 140, declared an emergency. Approved March 28, 1974.

Section 2 of S.L. 2008, ch. 191 declared an emergency. Approved March 18, 2008.

Section 2 of S.L. 2008, ch. 307 declared an emergency. Approved March 28, 2008.

JUDICIAL DECISIONS

Bids.

A bid for a new school building was unacceptable, where a contractor submitted a bid in violation of § 54-1904 by listing an “AA” subcontractor when a “AAA” subcontractor

was required which rendered the bid irresponsible and void under § 67-2310(6). *Neilson & Co. v. Cassia & Twin Falls County Joint Class A School Dist. 151*, 96 Idaho 763, 536 P.2d 1113 (1975).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Independent districts.
Purchase at execution sale.
Reversionary clause.

Independent Districts.

The election requirements for designating site for new school building did not apply to action taken by independent districts. *Hovenden v. Class A School Dist. No. 411*, 71 Idaho 4, 224 P.2d 1080 (1950).

Purchase at Execution Sale.

School district could purchase property at execution sale under judgment in its own

favor. *Evans v. Power County*, 50 Idaho 690, 1 P.2d 614 (1931).

Reversionary Clause.

Buildings built by school district on land deeded for school purposes did not revert to grantor despite reversionary clause to that effect, since reversionary clause was invalid. *Independent Sch. Dist. No. 7 v. Barnes*, 71 Idaho 203, 228 P.2d 939 (1951).

OPINIONS OF ATTORNEY GENERAL

School personnel incur no liability for allowing use of school facilities for purposes of child abuse investigation so long as the re-

porting was done in good faith and without malice. OAG 93-2.

RESEARCH REFERENCES

A.L.R. — Prospective use for tax exempt purposes as entitling property to tax exemption. 54 A.L.R.3d 9.

Right to condemn property owned or used by private educational, charitable or religious organization. 80 A.L.R.3d 833.

33-601A. Leasing of goods, equipment, buses and portable classrooms. — No provision of chapter 6, title 33, or chapter 28, title 67, Idaho Code, shall be construed to prevent a board of trustees from entering into lease-purchase agreements for goods, equipment, buses or portable classrooms, provided the agreement is in writing and meets all of the following requirements:

(1) The annual lease payments shall reflect reasonable compensation for use;

(2) No penalty shall be imposed on the school district for proper cancellation of the lease;

(3) The right to exercise the option to purchase shall be at the sole discretion of the school district; and

(4) The cost of purchase shall not exceed the reasonable value of the goods, equipment, buses or portable classrooms as of the time the option to purchase is exercised.

For the purposes of this section, "portable classroom" means a facility which is not so related to particular real estate that an interest in it arises under real estate law. [I.C., § 33-601A, as added by 1992, ch. 175, § 1, p. 552; am. 2005, ch. 213, § 6, p. 637.]

33-602. Use of school property or buildings for senior citizen centers. — The board of trustees of each school district shall have the power and ability to authorize the use of any school building or real property for the operation of a senior citizen center and to establish a policy of

charges, if any, to be made for such use with a group of senior citizens certified by the Idaho office [commission] on aging as being representative of senior citizens and resulting from the group having received older Americans act or state of Idaho senior services act moneys. [I.C., § 33-602, as added by 1988, ch. 277, § 1, p. 908.]

STATUTORY NOTES

Cross References. — Idaho senior services act, § 67-5005.

Federal References. — The older Americans act of 1965, referred to in this section, is codified as 42 USCS § 3001 et seq.

Compiler's Notes. — The Idaho office on

aging, referred to in this section, was established by S.L. 1976, Chapter 188, which was repealed by S.L. 1995, ch. 189, § 1, effective July 1, 1995. See now Idaho commission on aging, § 67-5001 et seq.

33-603. Payment of fees or returning of property. — The board of trustees of each school district shall have the power and the ability to require as a condition of graduation, as a condition of issuance of a diploma or certificate, or as a condition for issuance of a transcript, that any or all indebtedness incurred by the person when he was a student be satisfied, or that all books or other instructional material, uniforms, athletic equipment, advances on loans, or other personal property of the school district borrowed by the person when he was a student of the district be returned. Provided, the board of trustees of a school district or its designated employees may excuse the requirements of this section upon an adequate showing of financial need or other exigency and shall not delay transfer of school records to another school district or enrollment of the student in any other school. [I.C., § 33-603, as added by 1992, ch. 112, § 1, p. 341; am. 1996, ch. 138, § 1, p. 463.]

CHAPTER 7

FISCAL AFFAIRS OF SCHOOL DISTRICTS

SECTION.

33-701. Fiscal year — Payment and accounting of funds.

33-702. School warrants — How drawn.

33-703. Call of warrants for payment.

SECTION.

33-704. Warrants not presented within two years void.

33-705. Activity funds.

33-701. Fiscal year — Payment and accounting of funds. — The fiscal year of each school district shall be a period of twelve (12) months commencing on the first day of July in each year.

The board of trustees of each school district shall have the following powers and duties:

1. To determine and order paid all lawful expenses for salaries, wages and purchases, whether or not there be money in the treasury for payment of warrants drawn against any fund of the district. Warrants shall be signed by the treasurer of the district and countersigned by the chairman or vice-chairman of the board of trustees.

Whenever any school district has sufficient funds on deposit to do so, it may pay any allowed claim for salaries, wages or purchases by regular bank

check signed by the treasurer or assistant treasurer of the district and countersigned by the chairman, or vice-chairman, of the board of trustees.

The total amount of warrants or orders for warrants drawn on any fund, together with disbursements from such fund in any other manner made, shall not exceed ninety-five percent (95%) of the estimated income and revenue accrued or accruing to such fund for the same school year, until such income and revenue shall have been paid into the treasury to the credit of the district;

2. To invest all or part of any plant facilities reserve fund, or any fund accumulated for the payment of interest on, and the redemption of, outstanding bonds, or other obligations of the district in bonds or certificates of indebtedness of the United States of America, or in bonds or investments permitted by sections 67-1210 and 67-1210A, Idaho Code, or warrants of the state of Idaho, or in warrants or tax anticipation notes of any county or school district of the state of Idaho, when such investments shall be due and payable on or before the date any plant facilities reserve fund shall be required to be expended or any bonds or other obligations, or interest thereon, of the investing district shall become payable.

Whenever in the judgment of the board of trustees, the proceeds of any bond issue should be temporarily invested pending the expenditure of such proceeds for the purposes for which such bonds were issued, the proceeds may be invested in the manner and form hereinabove prescribed. Any interest, or profits accruing from such investments shall be used for the purposes for which the bonds were issued. Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the district;

3. To insure any schoolhouse and other property, and the district, against any loss by fire, casualty, or liability, and the board, its officers and employees, and to preserve its property for the benefit of the district. In case of loss of any insured property, any proceeds from insurance:

- (a) May be expended in constructing a temporary or permanent structure, but no sum greater than the insurance proceeds shall be so expended except upon approval of a majority of the school district electors voting in an election called for that purpose; or
- (b) May be placed in and made a part of the school plant facilities reserve fund of the district, if the district has such a fund; or
- (c) May be placed in a separate account in the bond interest and redemption fund of the district to repay any kind of obligation incurred by the district in replacing or restoring the property for which the insurance proceeds were received, and shall not be included in the computations of bond and bond interest levies as provided in section 33-802A, Idaho Code.

If the proceeds of any insurance received by a school district by reason of loss on real property shall be less than five thousand dollars (\$5,000), such proceeds may be credited to the general fund of the district;

4. To pay from the general fund of the district the expense of any member of the board incurred while traveling on the business of the board, or attending any meeting called by the state board of education or by the state superintendent of public instruction, or attending any annual or special

meetings of the state school trustees association, and to pay the membership fee of the board of trustees in said association. Whenever any member of the board of trustees resides at such distance from the meeting place of the board as to require, in the judgment of the board, such member to incur extraordinary expense in traveling from his home to and from said meeting place, the board may approve payment to such member of the extraordinary expense incurred in attending any meeting of the board.

For the purpose of this paragraph, the term "expense" or "extraordinary expense" shall include allowance for mileage or actual travel expense incurred;

5. To prepare, or cause to be prepared and published, in the manner hereinafter prescribed, within one hundred twenty (120) days from the last day of each fiscal year, an annual statement of financial condition and report of the school district as of the end of such fiscal year in a form prescribed by the state superintendent of public instruction. Such annual statement shall include, but not be limited to, the amounts of money budgeted and received and from what sources, and the amounts budgeted and expended for salaries and other expenses by category. Salaries may be reported in gross amount. Each school district shall have available at the administrative office, upon request, a full and complete list of vendors and the amount paid to each and a list of the number of teachers paid at each of the several stated gross salary levels in effect in the district.

Nothing herein provided shall be construed as limiting any school district as to any additional or supplementary statements and reports it may elect to make for the purpose of informing the public of its financial operations, either as to form, content, method, or frequency; and if all the information required herein to be published shall have been published as provided herein at regular intervals during the fiscal year covering successive portions of the fiscal year, then such information may be omitted from the annual statement of financial condition and report for such portions of the fiscal year as already have been reported.

The annual statement of financial condition and report shall be published within the time above prescribed in one (1) issue of a newspaper printed and published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, in the county in which the school district is located, or, if more than one (1) newspaper is published in said district or county, then in the newspaper most likely to give best general notice of the contents of such annual statement of financial condition and report to the residents of said district; provided, that if no newspaper is published in the district or county, then such statement of financial condition and report shall be published in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the contents to the residents of said district.

The chairman, clerk and treasurer of each school district shall certify the annual statement of financial condition and report to be true and correct, and the certification shall be included in each published statement.

In the event the board of trustees of any school district shall fail to prepare or cause to be prepared or to publish the annual statement of

financial condition and report as herein required, the state superintendent of public instruction shall cause the same to be prepared and published, and the cost thereof shall be an obligation of the school district. One (1) copy of the annual statement of financial condition and report shall be retained in the office of the clerk of the board of school trustees, where the same shall be open at all times to examination and inspection by any person;

6. To cause to be made a full and complete audit of the financial statements of the district as required in section 67-450B, Idaho Code.

The auditor shall be employed on written contract.

One (1) copy of the audit report shall be filed with the state department of education, after its acceptance by the board of trustees, but not later than November 10. If the audit report is not received by the state department of education by November 10, the department may withhold all or a portion of the district's November 15 distribution made pursuant to section 33-1009, Idaho Code, for noncompliance with the audit report deadline. Provided however, a district may appeal to the state board of education for reconsideration, in which case the state board of education may reinstate or adjust the funds withheld.

In the event the state department of education requests further explanation or additional information regarding a school district's audit report, such school district shall provide a full and complete response to the state department of education within thirty (30) days of receipt of the state department's request. If a school district fails to respond within the thirty (30) day time limit, the state department of education may withhold all or a portion of the district's next scheduled distribution to be made pursuant to section 33-1009, Idaho Code. Provided however, a district may appeal to the state board of education for reconsideration, in which case the state board of education may reinstate or adjust the funds withheld;

7. To file annually with the state department of education such financial and statistical reports as said state superintendent of public instruction may require;

8. To order and have destroyed any canceled check or warrant, or any form of claim or voucher which has been paid, at any time after five (5) years from the date the same was canceled and paid;

9. To review the school district budget periodically and make appropriate budget adjustments to reflect the availability of funds and the requirements of the school district. Any person or persons proposing a budget adjustment under this section shall notify in writing each member of the board of trustees one (1) week prior to the meeting at which such proposal will be made. Prior to the final vote on such a proposal, notice shall be posted and published once, as prescribed in section 33-402, Idaho Code. A budget adjustment shall not be approved unless voted affirmatively by sixty percent (60%) of the members of the board of trustees. Such amended budgets shall be submitted to the state superintendent of public instruction;

10. To invest any money coming into the hands of the school district in investments permitted by section 67-1210, Idaho Code. Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the district. [1963, ch. 13, § 66,

p. 27; am. 1963, ch. 211, § 1, p. 601; am. 1967, ch. 8, § 1, p. 10; am. 1972, ch. 124, § 1, p. 245; am. 1973, ch. 17, § 1, p. 34; am. 1976, ch. 83, § 1, p. 283; am. 1977, ch. 71, § 3, p. 134; am. 1978, ch. 61, § 1, p. 123; am. 1978, ch. 103, § 3, p. 210; am. 1979, ch. 77, § 1, p. 189; am. 1980, ch. 30, § 1, p. 50; am. 1980, ch. 352, § 1, p. 911; am. 1981, ch. 22, § 1, p. 36; am. 1985, ch. 107, § 4, p. 191; am. 1985, ch. 234, § 1, p. 554; am. 1986, ch. 47, § 1, p. 137; am. 1988, ch. 77, § 3, p. 132; am. 1989, ch. 18, § 1, p. 19; am. 1990, ch. 198, § 2, p. 443; am. 1993, ch. 327, § 15, p. 1186; am. 1993, ch. 387, § 6, p. 1417; am. 2006 (1st E.S.), ch. 1, § 2; am. 2007, ch. 169, § 1, p. 498; am. 2008, ch. 160, § 1, p. 457.]

STATUTORY NOTES

Cross References. — Plant facilities reserve fund, § 33-901.

State superintendent of public instruction, § 67-1501 et seq.

Amendments. — This section was amended by two 1993 acts — ch. 327, § 15, and ch. 387, § 6, both effective July 1, 1993 — which do not appear to conflict and have been compiled together.

The 1993 amendment, by ch. 327, § 15, in the third paragraph of subdivision 6. substituted “council” for “auditor”. Prior to the amendment, the paragraph read: “One (1) copy of the report of the audit shall be filed with the legislative auditor, and one (1) copy shall be filed with the state department of education, after its acceptance by the board of trustees, but not later than October 15;”. However, ch. 387, § 6 deleted the portion of the paragraph which contained the word “auditor”. Therefore, the paragraph is set out above as amended by ch. 387, § 6.

The 1993 amendment, by ch. 387, § 6, in the first paragraph of subdivision 6. deleted “each year,” following “To cause to be made”; deleted “of all” following “a full and complete audit”; substituted “statements” for “transactions” following “of the financial”; substituted “as required in section 67-450B, Idaho Code” for “, and of the activity or student body funds, except that in elementary school districts such audit shall be made at intervals of not more than two (2) years. Any audit shall be made by and under the direction of the board

of trustees by an independent auditor, in accordance with generally accepted auditing standards and procedures”; in the third paragraph of subdivision 6. added “audit” following “One (1) copy of the”; deleted “of the audit” preceding “shall be filed”; and deleted “with the legislative auditor, and one (1) copy shall be filed” preceding “with the state department of education.”

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, deleted the former second sentence of Paragraph 9, which read: “Revenue derived from maintenance and operation levies made pursuant to section 33-802 2, Idaho Code, shall be excluded from budget adjustments as provided in this paragraph”.

The 2007 amendment, by ch. 169, inserted “investments permitted by sections 67-1210 and 67-1210A, Idaho Code” in subsection 2.

The 2008 amendment, by ch. 160, in subsection (6), in the third paragraph, substituted “November 10” for “October 15” in the first sentence, added the last two sentences, and added the last paragraph.

Compiler’s Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

Effective Dates. — Section 2 of S.L. 1963, ch. 211 provided that the act should take effect from and after July 1, 1963.

Section 2 of S.L. 1978, ch. 61 declared an emergency. Approved March 8, 1978.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Authority of board.
Public function.
Wrongful payment.

Authority of Board.

Board of trustees had no authority, independent of state, to draw against funds appropriated in support of normal school. *Thomas v. State*, 16 Idaho 81, 100 P. 761 (1909), overruled on other grounds, *Grant Constr. Co. v. Burns*, 92 Idaho 408, 443 P.2d 1005 (1968).

Public Function.

Officers of school district, in paying out funds of district, exercised a public function and acted for district only in a public and

governmental capacity. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

Wrongful Payment.

Any acts of negligence, misconduct, mistake, or omissions on part of officers of school district in paying out funds of district could not estop district from maintaining action to recover back money wrongfully taken. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

33-702. School warrants — How drawn. — Whenever the board of trustees has approved and ordered payment of salaries, wages, or other claims against the school district, and the same is not paid by regular bank check, the clerk of the board of trustees shall issue a school district warrant, or order for warrant drawn against the appropriate fund, and shall sign the same.

The clerk of the board of trustees of any elementary school district with less than six (6) teachers within the district shall execute an order for warrant or warrants in duplicate, and present the same to the county auditor of the county, or of the home county, in which the district lies. The county auditor shall thereupon issue his warrant drawn against the school district fund as shown by the order for warrant.

All warrants so issued shall be presented to the treasurer of the school district for payment by the persons holding the same. If there is insufficient money to the credit of the fund on which the warrant is drawn, the treasurer shall endorse on the back of said warrant, "Not paid for want of funds" and hand the same to the person presenting the warrant for payment. Warrants so endorsed by the treasurer shall bear interest at a rate to be specified by the board of trustees of the school district.

Warrants issued by, or in behalf of, any school district shall be paid in the order of their issuance from funds accruing for the year in which they are issued. After all outstanding indebtedness for general school purposes for any one (1) year has been paid, any balance in the general school fund for that year shall be transferred to a warrant redemption fund for payment of any registered warrants. Where there is no outstanding indebtedness for general school purposes, nor any registered warrants, any such balance may be used for the payment of current expenses for the next fiscal year. [1963, ch. 13, § 67, p. 27; am. 1975, ch. 108, § 1, p. 220; am. 1978, ch. 103, § 4, p. 210; am. 1979, ch. 5, § 1, p. 7; am. 1980, ch. 61, § 4, p. 118.]

STATUTORY NOTES

Cross References. — Nonpayment of warrants for want of funds, indorsement, interest rate, §§ 31-2124, 31-2125.

Effective Dates. — Section 2 of S.L. 1975, ch. 108, declared an emergency. Approved March 24, 1975.

Section 2 of S.L. 1979, ch. 5 declared an emergency. Approved February 23, 1979.

Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Forgery.

Issuance of warrant.

Forgery.

Information charging forgery of order for issuance of warrant chargeable against funds of school district held sufficient. *Ex parte Lowe*, 50 Idaho 602, 298 P. 940 (1931).

Issuance of Warrant.

Order by school district was prerequisite to issuance of warrant on county treasurer against school district's funds. *Common*

School Dist. No. 27 v. Twin Falls Nat'l Bank, 50 Idaho 668, 299 P. 662 (1931).

No presumption existed that county auditor had returned order, directing him to issue warrant against school fund, to school district, where auditor had not testified that he received order from district. *Common School Dist. No. 27 v. Twin Falls Nat'l Bank*, 50 Idaho 668, 299 P. 662 (1931).

33-703. Call of warrants for payment. — The treasurer of each school district, on the first Monday of each month on which there is sufficient money in the treasury to pay any outstanding warrants, shall issue a call for the warrants which such moneys will pay. In elementary school districts the call shall be made by posting a list of the warrants called, designating each warrant by number, amount, and person to whom issued, together with a notice that said warrants are called for payment, at the front door of the county courthouse. In all other districts the call shall be made by posting such notice on or near the main door of the administrative offices of the district. The treasurer shall execute a certificate of the posting of such notice showing the date and place of posting, and file it, together with a copy of the notice posted, in the permanent files of his office. All warrants so called shall cease to bear interest at the expiration of ten (10) days from the date of posting such notice of call. [1963, ch. 13, § 68, p. 27.]

STATUTORY NOTES

Cross References. — Notice by mail, § 60-109A.

33-704. Warrants not presented within two years void. — All school district warrants not presented for payment within two (2) years after being called shall be void and shall constitute no claim against the school district by which they were issued, and the treasurers of all school districts are hereby authorized to transfer any moneys set aside for the payment of such warrants to the general school fund of their districts at the expiration of such period, and no treasurer of any school district shall pay any warrant not presented within such two (2) year period. When any such transfer is made by the treasurer of any elementary district, a certificate of such transfer shall be filed with the county auditor. [1963, ch. 13, § 69, p. 27.]

33-705. Activity funds. — 1. The board of trustees of each school district, including specially chartered districts, shall create a fund or funds

for the purpose of controlling and accounting for the receipts, deposits, expenditures, assets, liabilities and fund balances arising from the following transactions:

- (a) Admission charges for interscholastic activities.
- (b) The sale of yearbooks and annuals.
- (c) Student fee collections which are used to provide more than one (1) activity or benefit to all of the students of a school or school building.
- (d) Receipts from vending machines located on school property.
- 2. For each fund created the board of trustees shall promulgate policies:
 - (a) Describing with reasonable certainty the nature and type of expenditures which may be made therefrom.
 - (b) Setting forth the requirements for the expenditures and withdrawal of such moneys.

3. The treasurer of the district shall provide accounting procedures for the receipt, deposit, expenditure and withdrawal of such moneys and procedures for monthly reporting to the board of trustees of the transactions, assets, liabilities and fund balance for each such fund.

4. For other activity or student funds including, but not limited to, custodial funds, the board of trustees may create a separate fund or funds and promulgate policies to provide for accounting and control thereof.

5. Nothing in this section limits the power of the board of trustees of any school district from promulgating policies or imposing further controls, requirements, accounting and reporting procedures with respect to any funds or moneys of the district or moneys which it holds as custodian for the students.

6. Disbursements from any of the funds created under this section shall be made by regular bank check signed by the treasurer or assistant treasurer of the district and countersigned by the chairman or vice chairman of the board of trustees or other employee of the district designated by the board of trustees. [I.C., § 33-705, as added by 1990, ch. 198, § 3, p. 443; am. 1999, ch. 165, § 1, p. 452.]

CHAPTER 8

BUDGET AND TAX LEVY

SECTION.

- 33-801. School district budget.
- 33-801A. General fund contingency reserve.
- 33-802. School levies.
- 33-802A. Computation of bond and bond interest levies.
- 33-803. Levy for education of children of migratory farm workers.
- 33-804. School plant facilities reserve fund levy.

SECTION.

- 33-804A. School plant facilities reserve fund levy for safe school facilities.
- 33-805. School emergency fund levy.
- 33-806. [Repealed.]
- 33-807. Certification of levies.
- 33-808. Notice of adjustment to market value for assessment purposes upon termination of a revenue allocation area.

33-801. School district budget. — No later than twenty-eight (28) days prior to its annual meeting, the board of trustees of each school district shall have prepared a budget, in form prescribed by the state superintendent of public instruction, and shall have called and caused to be held a

public hearing thereon, and at such public hearing, or at a special meeting held no later than fourteen (14) days after the public hearing, shall adopt a budget for the ensuing year. Notice of the hearing shall be posted, and published as prescribed in section 33-402, Idaho Code, and a record of the hearing shall be kept by the clerk of the board of trustees. At the time said notice is given and until the date of the hearing, a copy of the budget shall be available for public inspection at all reasonable times at the administrative offices of the school district, or at the office of the clerk of the district. The board of trustees of each school district shall also prepare and publish, as a part of such notice, a summary statement of the budget for the current and ensuing years. Such statement shall be prepared in a manner consistent with standard accounting practices and in such form as the state superintendent of public instruction shall prescribe, and, among other things, said statement shall show amounts budgeted for all major classifications of income and expenditures, with total amounts budgeted for salary and wage expenditures in each such classification shown separately. Such statement shall show amounts actually expended for the two (2) previous years for the same classification for purposes of comparison. The budgeted dollar amounts of revenue in those categories included within the provisions of section 33-802, Idaho Code, as approved within the adopted budget shall be the same as presented to the respective county commissioners for tax levy purposes. [1963, ch. 13, § 90, p. 27; am. 1963, ch. 348, § 1, p. 986; am. 1973, ch. 62, § 2, p. 102; am. 1975, ch. 46, § 1, p. 85; am. 1978, ch. 158, § 1, p. 346; am. 1985, ch. 107, § 5, p. 191; am. 1989, ch. 2, § 1, p. 3; am. 1997, ch. 175, § 1, p. 494.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Effective Dates. — Section 2 of S.L. 1963, ch. 348 provided that the act should take

effect from and after July 1, 1963.

Section 2 of S.L. 1978, ch. 158 declared an emergency. Approved March 20, 1978.

JUDICIAL DECISIONS

Cited in: *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Mandatory requirements.

Purpose of statute.

Requirements of section.

Mandatory Requirements.

It was mandatory on the trustees that they prepare and submit a budget of expenditures of the past year and their estimate of the requirements for the coming year. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

Purpose of Statute.

The former statute requiring preparation of budget was enacted for the information of the electors present at the annual meeting, in order that they have had an opportunity to compare the proposed budget with the expenditures of the past year and to aid in deter-

mining the necessity and wisdom of making the proposed expenditures. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

Requirements of Section.

A minute and detailed statement of all possible expenses for teachers' salaries, each

kind of material, equipment, labor, taxes and insurance that may be required for a school district was required under the former section governing the school district budget. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

33-801A. General fund contingency reserve. — The board of trustees of any school district may create and establish a general fund contingency reserve within the annual school district budget. Such general fund contingency reserve shall not exceed five per cent (5%) of the total general fund budget, or the equivalent value of one (1) support unit computed as required by section 33-1002, Idaho Code, whichever is greater. Disbursements from said fund may be made by resolution from time to time as the board of trustees determines necessary for contingencies that may arise. The balance of said fund shall not be accumulated beyond the budgeted fiscal year. If any money remains in the contingency reserve it shall be treated as an item of income in the following year's budget. [I.C., § 33-801A, as added by 1977, ch. 197, § 1, p. 533; am. 1981, ch. 138, § 1, p. 241; am. 1986, ch. 44, § 1, p. 129.]

33-802. School levies. — Any tax levied for school purposes shall be a lien on the property against which the tax is levied. The board of trustees shall determine the levies upon each dollar of taxable property in the district for the ensuing fiscal year as follows:

(1) **Bond, Interest and Judgment Obligation Levies.** Such levies as shall be required to satisfy all maturing bond, bond interest, and judgment obligations.

(2) **Budget Stabilization Levies.** School districts not receiving state equalization funds in fiscal year 2006 may authorize a budget stabilization levy for calendar year 2006 and each year thereafter. Such levies shall not exceed the difference between the amount of equalized funds that the state department of education estimates the school district will receive in fiscal year 2007, based on the school district's fiscal year 2006 reporting data, and the combined amount of money the school district would have received from its maintenance and operation levy and state property tax replacement funds in fiscal year 2007 under the laws of the state of Idaho as they existed prior to amendment by the first extraordinary session of the fifty-eighth Idaho legislature. The state department of education shall notify the state tax commission and affected counties and school districts of the maximum levy amounts permitted, by no later than September 1, 2006.

(3) **Supplemental Maintenance and Operation Levies.** No levy in excess of the levy permitted by this section shall be made by a noncharter district unless such a supplemental levy in a specified amount and for a specified time not to exceed two (2) years be first authorized through an election held pursuant to chapter 4, title 33, Idaho Code, and approved by a majority of the district electors voting in such election. A levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees in the second year.

(4) Charter District Supplemental Maintenance and Operation. Levies pursuant to the respective charter of any such charter district shall be first authorized through an election held pursuant to chapter 4, title 33, Idaho Code, and approved by a majority of the district electors voting in such election.

(5) The board of trustees of any school district that has, for at least seven (7) consecutive years, been authorized through an election held pursuant to chapter 4, title 33, Idaho Code, to certify a supplemental levy that has annually been equal to or greater than twenty percent (20%) of the total general maintenance and operation fund, may submit the question of an indefinite term supplemental levy to the electors of the school district. Such question shall clearly state the dollar amount that will be certified annually and that the levy will be for an indefinite number of years. The question must be approved by a majority of the district electors voting on the question in an election held pursuant to chapter 4, title 33, Idaho Code. The levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees during any fiscal year.

(6) A charter district may levy for maintenance and operations if such authority is contained within its charter. In the event property within a charter district's boundaries is contained in a revenue allocation area established under chapter 29, title 50, Idaho Code, and such revenue allocation area has given notice of termination thereunder, then, only for the purpose of determining the levy described in this subsection, the district may add the increment value, as defined in section 50-2903, Idaho Code, to the actual or adjusted market value for assessment purposes of the district as such value existed on December 31 of the previous year. [1963, ch. 13, § 91, p. 27; am. 1963, ch. 422, § 1, p. 1097; am. 1970, ch. 61, § 1, p. 149; am. 1973, ch. 296, § 1, p. 620; am. 1979, ch. 254, § 2, p. 661; am. 1980, ch. 390, § 3, p. 990; am. 1981, ch. 224, § 1, p. 433; am. 1983, ch. 235, § 1, p. 639; am. 1987, ch. 52, § 1, p. 85; am. 1987, ch. 273, § 1, p. 566; am. 1988, ch. 344, § 1, p. 1021; am. 1989, ch. 8, § 1, p. 9; am. 1991, ch. 313, § 1, p. 820; am. 1995, ch. 26, § 1, p. 33; am. 1996, ch. 322, § 20, p. 1029; am. 2005, ch. 191, § 1, p. 591; am. 2006 (1st E.S.), ch. 1, § 3.]

STATUTORY NOTES

Cross References. — Bonds, levy by county commissioners, § 33-1114.

County commissioners, tax levy, § 33-1011.

Emergency fund levy, § 33-805.

Migratory farm workers, levy for education of children, § 33-803.

Plant facilities reserve fund levy, § 33-804.

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted present Paragraph (2) for the former paragraph, which related to maximum school maintenance and operation levies, deleted former Paragraphs 3 and 6, which related to authorized school maintenance and operation levies and local district contributions, added present Paragraph (6), and re-

numbered the remaining paragraphs accordingly.

Legislative Intent. — Section 25 of S.L. 2006 (1st E.S.), ch. 1, provides: "The Legislature finds and declares that the issue of the property tax funding maintenance and operations of public schools is of importance to the citizens of the state of Idaho. As a representative body, members of the Legislature desire to be responsive and responsible to these citizens. For this reason, the Legislature herewith submits an advisory ballot to the electors of the state of Idaho, and the results will guide the Legislature as to whether the three-tenths of one percent property tax previously contained in Section 33-802, Idaho Code, and levied against the market value of

taxable property in the school districts for maintenance and operation purposes of school districts should continue to be removed and the funds be replaced by a sufficient increase in the state sales tax.

"The Secretary of State shall have the question below placed on the 2006 general election ballot and shall take necessary steps to have the results on the question tabulated. The question shall be as follows:

"Should the State of Idaho keep the property tax relief adopted in August 2006, reducing property taxes by approximately \$260 million and protecting funding for public schools by keeping the sales tax at 6%?"

"The advisory question provided for in this act is hereby declared to be a 'measure' for purposes of Chapter 66, Title 67, Idaho Code, and the provisions of Chapter 66, Title 67, Idaho Code, shall apply thereto."

The advisory question was answered in the affirmative by the voters in the 2006 general election.

Compiler's Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

Effective Dates. — Section 2 of S.L. 1970, ch. 61 declared an emergency. Approved February 25, 1970.

Section 4 of S.L. 1973, ch. 296 read: "An

emergency existing therefor, which emergency is hereby declared to exist, sections 1 and 2 of this act shall be in full force and effect on and after the passage and approval of this act, and retroactively to January 1, 1973. Section 3 of this act shall be in full force and effect on and after July 1, 1973." Approved March 15, 1973.

Section 4 of S.L. 1980, ch. 390 declared an emergency and stated that the act would take effect on and after its passage and approval and retroactively to January 1, 1980. Approved April 10, 1980.

Section 2 of S.L. 1983, ch. 131 declared an emergency. Approved April 4, 1983.

Section 3 of S.L. 1983, ch. 235 declared an emergency and provided that the act should be in full force and effect retroactive to January 1, 1983. Approved April 13, 1983.

Section 3 of S.L. 1988, ch. 344 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1988." Approved April 6, 1988.

Section 2 of S.L. 1991, ch. 313, declared an emergency. Approved April 4, 1991.

Section 7 of S.L. 1995, ch. 26 declared an emergency and provided that sections 1, 2, 4, 5 and 6 of this act shall be in full force and effect on and after February 16, 1995, and retroactively to January 1, 1995. Approved February 16, 1995.

JUDICIAL DECISIONS

ANALYSIS

Ad valorem property tax.
Constitutionality.
Notice of election.

Ad Valorem Property Tax.

The state's system of public school financing, in which per pupil expenditures vary among the school districts as a result of variations in the districts' assessed valuations for purposes of an ad valorem property tax, does not deny equal protection of the law to nor discriminate against students in less affluent school districts with low expenditures. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

Constitutionality.

This section's treatment of chartered school districts differently than non-chartered school districts in their respective powers to levy additional taxes to fund education is blatantly discriminatory and deserving of an intermediate standard of scrutiny. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

Notice of Election.

This section does not specifically mention "building purposes" as an authorized use of funds raised pursuant to this section, but the definition of "building purposes" contained in the caselaw is broad enough to include other purposes authorized by the statute and yet would include purposes prohibited by both the statute and the constitution; therefore, because of this broad definition, the court could not say as a matter of law that the term "building purposes" invalidated the notice of election. *Lind v. Rockland Sch. Dist.*, 120 Idaho 928, 821 P.2d 983 (1991).

The notice of election published by the school district for the purpose of giving notice of a supplemental levy satisfied the requirement of § 33-402 a.7. *Lind v. Rockland Sch. Dist.*, 120 Idaho 928, 821 P.2d 983 (1991).

Cited in: *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeals.

Assumption of constitutionality.

Certification by trustees.

Clerical function of commissioners.

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Constitutionality.

Duty to pay judgments.

Jurisdictional aspects of levy.

Legislative intent.

Levy defined.

Necessity of purpose.

Notice.

Section inapplicable to extraordinary debts.

Uniformity of levy.

Appeals.

Appeal could be taken from order of board making a levy of taxes. *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911). See also *Dart v. Board of County Comm'rs*, 20 Idaho 445, 119 P. 52 (1911); *Coon v. Sommercamp*, 26 Idaho 776, 146 P. 728 (1915).

Assumption of Constitutionality.

The supreme court would assume in favor of the constitutionality of a statute that the purpose of providing for levy of special tax on unorganized school districts was to provide revenue for the payment of tuition for children of school age residing in the districts. *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

Certification by Trustees.

Special school tax had to be levied by electors at annual meeting and should have been certified by board of trustees to board of county commissioners as so levied. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

Clerical Function of Commissioners.

Board of county commissioners could not levy special school tax, as its functions were purely clerical or ministerial. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

Compliance with Statute.

Unanimous vote of electors of common school district at annual meeting fixing total budget for maintenance of school during ensuing year was held to be a substantial compliance with the former statute requiring electors to vote levy of special tax for the maintenance of school during the ensuing year, so as to require certification of such levy to county commissioners by trustees. *Copenhagen v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

Constitutionality.

The former statute purporting to require the levy of a special three-mill tax in unorga-

nized school districts irrespective of the number of school children therein, and to provide for the turning of the money so raised over to the county at large to be placed in the county treasury to the credit of the county school fund, was unconstitutional because it attempted to levy a special tax on unorganized school districts only, without extending such tax to all of the same class of subjects within the territorial limits of the authority levying the tax, and because it attempted to authorize county commissioners as trustees of unorganized school districts to raise the legislative levy above three mills and to turn the money received therefrom into the general county school fund. *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

Duty to Pay Judgments.

The former section governing general school levies recognized the necessity that school districts meet and pay their judgment obligations. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

Judgment in favor of certain school districts for specified sums against certain other school districts for moneys resulting from misapportionment of school funds, providing for the payment thereof out of future apportionments and taxes, directing the levying of taxes for payment thereof, and retaining jurisdiction to enforce the judgment, was within general powers of a court of equity and authorized by statute. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

Jurisdictional Aspects of Levy.

Statutory requirements for levying of a special tax by a school district were jurisdictional. *Petrie v. Common School Dist. No. 5*, 38 Idaho 583, 223 P. 535 (1924).

Legislative Intent.

The intent of the legislature to vest exclusive power in the annual meeting, instead of

the board, to pass upon the budget, was emphasized by the former section governing general school levies which vested power in the board to levy a special tax only when the annual meeting neglected or refused to do so. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

Levy Defined.

"Levy," defining duty of county commissioners, denoted mere ministerial act of computing and extending a tax according to an assessment, as distinguished from its other meaning referring to legislative function of determining amount of money to be raised by taxation. *Northern P.R.R. v. Chapman*, 29 Idaho 294, 158 P. 560 (1916).

Necessity of Purpose.

Where there were no children of school age within an unorganized school district and no outstanding claims, the statutory purpose of providing for levy of special tax on unorganized school districts never arose, and there could be no lawful tax, since there was no lawful purpose, and the people could not be taxed except for a lawful purpose. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941).

Notice.

The former section authorized trustees to fix tax levies up to a stated limit, for levies

above that limit an election was to be called, and the only notice required was when the board exceeded the limit of the levy authorized; no notice was required when a levy was within the authorized limits. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

Section Inapplicable to Extraordinary Debts.

Former law providing for levy of a special tax for the construction or maintenance of school property was inapplicable to indebtedness of an extraordinary character, such as debt of school district to be assumed by an adjoining school district upon the division of the former between two counties. *Independent Sch. Dist. No. 12 v. Manning*, 32 Idaho 512, 185 P. 723 (1919).

Uniformity of Levy.

The tax levied by the board of county commissioners, for general school purposes, had to be uniform on all taxable property throughout the county, whereas tax levied by school districts needed to be uniform only on all taxable property within the particular district which made the levy. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941).

RESEARCH REFERENCES

A.L.R. — Garage or parking lot as within tax exemption extended to property or educational, charitable or hospital organizations. 33 A.L.R.3d 938.

Validity of basing public school financing system on local property taxes. 41 A.L.R.3d 1220.

33-802A. Computation of bond and bond interest levies. — When the board of trustees of any school district determines and makes a levy allowed by section 33-802, Idaho Code, and incorporates such levy as a part of the school district's budget to service all maturing bond and bond interest payments for the ensuing fiscal year, it shall take into consideration any state bond levy equalization funds provided pursuant to section 33-906, Idaho Code, and any balances remaining or that may remain in its bond interest and redemption fund after meeting its bond and bond interest obligations for its current fiscal year. The levy so made for the ensuing fiscal year shall be an amount which, together with any state bond levy equalization funds provided pursuant to section 33-906, Idaho Code, and the balance in its bond interest and redemption fund remaining after meeting its current fiscal year bond and bond interest obligations, shall satisfy all maturing bond and bond interest payments for at least the ensuing twelve (12) months, and not to exceed the ensuing twenty-one (21) months counted from July 1 of the current calendar year. [I.C., § 33-802A, as added by 1973, ch. 282, § 1, p. 597; reen. 1974, ch. 4, § 1, p. 20; am. 1974, ch. 171, § 1,

p. 1430; am. 2002, ch. 159, § 1, p. 464; am. 2003, ch. 268, § 1, p. 717; am. 2006 (1st E.S.), ch. 1, § 4.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “a levy allowed by section 33-802” for “the levy required by section 33-802” near the beginning of the first sentence.

Compiler’s Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

Effective Dates. — Section 4 of S.L. 1973, ch. 282 declared an emergency. Approved March 16, 1973.

Section 2 of S.L. 1974, ch. 171, provided the act should be in full force and effect on and after July 1, 1974.

33-803. Levy for education of children of migratory farm workers. — In any school district in which there is located any farm labor camp and the children of migratory farm workers housed therein attend the schools of the district, the board of trustees may make a levy not exceeding one tenth percent (.1%) of the market value for assessment purposes on all taxable property within the district, in addition to any other levies authorized by law, for the cost of educating such children.

Whenever the aggregate of the levy herein authorized and other levies made for maintenance and operation of the district shall exceed six tenths percent (.6%) of the market value for assessment purposes on all taxable property within the district, the levy authorized by this section must be approved by the school district electors at a tax levy election held for that purpose. Notice of such election shall be given, the election shall be conducted, and the returns thereof made, as provided in sections 33-401 through 33-406, Idaho Code; and the question shall be approved only if a majority of the qualified electors voting at such election vote in favor thereof. If the election be held in conjunction with any other school election, the question herein shall be submitted by separate ballot. [1963, ch. 13, § 92, p. 27; am. 1995, ch. 82, § 11, p. 218.]

STATUTORY NOTES

Compiler’s Notes. — The reference in the second paragraph to section 33-401 through 33-406 is to those sections prior to the revision of chapter 4, title 33, Idaho Code by S.L.

1982, chapter 60. The reference in the second paragraph should be to chapter 4, title 33, Idaho Code.

33-804. School plant facilities reserve fund levy. — In any school district in which a school plant facilities reserve fund has been created, either by resolution of the board of trustees or by apportionment to new districts according to the provisions of section 33-901, Idaho Code, to provide funds therefor the board of trustees shall submit to the qualified school electors of the district the question of a levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation existed on December 31 of the previous year, for a period not to exceed ten (10) years.

The question of a levy to be submitted to the electors of the district and the notice of such election shall state the dollar amount proposed to be collected

each year during the period of years in each of which the collection is proposed to be made, the percentage of votes in favor of the proposal which are needed to approve the proposed dollar amount to be collected, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be conducted and the returns canvassed as provided in chapter 4, title 33, Idaho Code; and the dollar amount to be collected shall be approved only if:

1. Fifty-five percent (55%) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of less than two-tenths of one percent (.2%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election;

2. Sixty percent (60%) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of two-tenths of one percent (.2%) or more and less than three-tenths of one percent (.3%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election; or

3. Two-thirds ($\frac{2}{3}$) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of three-tenths of one percent (.3%) or more of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election.

If the question be approved, the board of trustees may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than ten (10) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the board of trustees may submit to the qualified school electors in the same manner as before, the question whether the number of years, or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

Any bonded indebtedness incurred in accordance with the provisions of section 33-1103, Idaho Code, subsequent to the approval of a plant facilities reserve fund levy shall not affect the terms of that levy for any time during which such levy is in effect. [1963, ch. 13, § 93, p. 27; am. 1970, ch. 115, § 1, p. 276; am. 1975, ch. 220, § 1, p. 612; am. 1979, ch. 254, § 3, p. 661; am. 1981, ch. 224, § 2, p. 433; am. 1987, ch. 256, § 4, p. 519; am. 1992, ch. 276, § 1, p. 850; am. 1994, ch. 299, § 1, p. 946; am. 1996, ch. 322, § 21, p. 1029.]

STATUTORY NOTES

Cross References. — School plant facilities reserve fund, § 33-901.

Effective Dates. — Section 2 of S.L. 1975, ch. 220 declared an emergency. Approved March 28, 1975.

Section 7 of S.L. 1981, ch. 224 declared an emergency and provided that all sections of the act, except section 2, should be in full force

and effect retroactive to January 1, 1981 and that section 2 should be in full force and effect July 1, 1981. Approved April 6, 1981.

Section 5 of S.L. 1987, ch. 256 (approved April 1, 1987 at 9:45 AM) declared an emergency. However, that section was repealed by § 1 of S.L. 1987, ch. 25 (approved April 1, 1987 at 2:50 PM).

33-804A. School plant facilities reserve fund levy for safe school facilities. — (1) Definition. As used in this section, public school facilities mean the physical plant of improved or unimproved real property owned or operated by a school district, including school buildings, administration buildings, playgrounds, athletic fields, etc., used by schoolchildren or school district personnel in the normal course of providing a general, uniform and thorough system of public, free common schools, but does not include areas, buildings or parts of buildings closed from or not used in the normal course of providing a general, uniform and thorough system of public, free common schools. The aspects of a safe environment conducive to learning as provided by section 33-1612, Idaho Code, that pertain to the physical plant used to provide a general, uniform and thorough system of public, free common schools are hereby defined as those necessary to comply with the safety and health requirements set forth in this section.

(2) Whenever under applicable law a board of trustees of a school district has identified on the basis of an independent inspection of the district's school facilities that some of those school facilities fail to comply with codes addressing safety and health standards for facilities (including electrical, plumbing, mechanical, elevator, fire safety, boiler safety, life safety, structural, snow loading, and sanitary codes) adopted by or pursuant to the Idaho uniform school building safety act, chapter 80, title 39, Idaho Code, adopted by the state fire marshal, adopted by generally applicable local ordinances, or adopted by rule of the state board of education and applicable to school facilities, and that those school facilities that do not comply with codes addressing unsafe or unhealthy conditions contain unsafe or unhealthy conditions that cannot be abated with the school district's income from current sources, that school district shall be eligible to participate in the Idaho safe schools facilities loan program administered by Idaho banks. Eligibility to participate in the Idaho safe schools facilities loan program shall not affect or disqualify any school district from eligibility to participate in any other program to abate unsafe or unhealthy conditions.

(3) In any school district in which a school plant facilities reserve fund has been created, the period for which the school plant facilities reserve fund levy may be in effect may extend beyond ten (10) years but not to exceed twenty (20) years, provided that:

(a) The board of trustees shall determine that all or a portion of the amount to be collected each year during the period of years in which the levy is collected is made to abate, repair or replace school facilities with unsafe or unhealthy conditions.

(b) The question of the levy to be submitted to the electors of a district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is to be made to abate, repair or replace school facilities for the purpose of providing buildings complying with codes defining safe and healthy conditions as required by applicable law.

(c) The election for such a levy conducted pursuant to this section shall be held on one (1) of the days authorized by section 34-106, Idaho Code.

The provisions of section 33-804, Idaho Code, that are not modified by this section shall apply to levies made pursuant to this section. [I.C., § 33-804A, as added by 2000, ch. 344, § 2, p. 1165; am. 2001, ch. 326, § 1, p. 1143.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2000, ch. 344 declared an emergency. Approved April 14, 2000. Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.

33-805. School emergency fund levy. — Before the second Monday of September in each year, the board of trustees of any school district which qualifies under the provisions of this section may certify its need hereunder to the board of county commissioners in each county in which the district may lie, and request a school emergency fund levy upon all taxable property in the district.

The board of trustees shall compute the number of pupils in average daily attendance in the schools of the district as of such date, and if there be pupils in average daily attendance above the number in average daily attendance for the same period of the school year immediately preceding the board shall:

1. Divide the total of the foundation program allowance based on said last annual report by the total number of pupils in average daily attendance shown thereon;

2. Multiply the quotient so derived by the number of additional pupils in average daily attendance.

The number of pupils in average daily attendance for each period and the amount so computed shall be certified to the board of county commissioners of the county in which the district lies.

In the case of a joint district, the board of trustees shall certify to the board of county commissioners of each county in which the district lies, to each, that proportion of the amount computed, as hereinabove, as the assessed value of taxable property within the district situate in each such county bears to the total assessed value of all taxable property in the district.

After receiving the amounts certified, as hereinabove provided, the board, or boards, of county commissioners shall determine the levy according to section 63-805(3), Idaho Code, as amended; and the proceeds of any such levy shall be credited to the general fund of the district.

The school district shall advertise its intent to seek an emergency levy pursuant to this section by publishing in at least the newspaper of largest

paid circulation published in the county of the district, or if there is no such newspaper, then in a newspaper published nearest to the district where the advertisement is required to be published. For purposes of this section, the definition of "newspaper" shall be as established in sections 60-106 and 60-107, Idaho Code; provided further that the newspaper of largest circulation shall be established by the statement of average annual paid weekday circulation listed on the newspaper's sworn statement of ownership that was filed with the United States post office on a date most recently preceding the date on which the advertisement required in this section is to be published. The advertisement shall be run when the school district ascertains that it will request an emergency school fund levy as provided in this section and shall be published once a week for two (2) weeks following action by the board of trustees.

The form and content of the notice shall be substantially as follows:

NOTICE OF PROPERTY TAX INCREASE BY SCHOOL BOARD

The (name of the school district) has proposed to increase the amount of ad valorem tax dollars it collects by certifying a school emergency fund levy pursuant to section 33-805, Idaho Code, for the period to The total amount of dollars to be collected pursuant to this levy is estimated to be The amount of dollars to be collected pursuant to this levy on a typical home of \$50,000 taxable value of last year is estimated to be The amount of dollars to be collected pursuant to this levy on a typical farm of \$100,000 taxable last year is estimated to be The amount of dollars to be collected pursuant to this levy on a typical business of \$200,000 taxable value of last year is estimated to be

CAUTION TO TAXPAYER: The amounts shown in this schedule do NOT reflect tax charges that are made because of voter approved bond levies, override levies, supplemental levies, or levies applicable to newly annexed property. Also the amounts shown in this schedule are an estimate only and can vary with the amount of dollars and the levy amount certified and the taxable value of individual property.

[1963, ch. 13, § 94, p. 27; am. 1963, ch. 311, § 1, p. 835; am. 1963, ch. 322, § 6, p. 919; am. 1971, ch. 30, § 1, p. 74; am. 1992, ch. 276, § 2, p. 850; am. 1996, ch. 322, § 22, p. 1029.]

STATUTORY NOTES

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|--|---|
| Effective Dates. — Section 5 of S.L. 1963, ch. 311, provided that the act should take effect from and after July 1, 1963. | emergency. Approved April 8, 1992. |
| Section 3 of S.L. 1992, ch. 276 declared an | Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997. |

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Property subject to levy.
Purpose of fund.

Property Subject to Levy.

The county school emergency fund was to be raised by a tax levied upon all taxable property of the county, or by a tax levied upon the taxable property of the school district or districts which requested the levy to be made. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

Purpose of Fund.

In the county school emergency fund former statutes the levy provided was authorized in order to provide funds with which to defray

unanticipated expenses of educational and transportation programs brought about by the reason of increase in pupil attendance; it was in the nature of an emergency measure to procure funds with which to provide, among other things, teachers, classroom facilities and transportation for new classroom units, the number of which could not be determined until pupil enrollment took place at the commencement of the next term. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

33-806. School special assistance levy. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised S.L. 1963, ch. 13, § 95, p. 27; am. 1963, ch. 311, § 2, p. 835; am. 1965, ch. 217, § 1, p. 500, was repealed by S.L. 1979, ch. 254, § 1.

33-807. Certification of levies. — The board of trustees of each school district, having determined the levies required for the several purposes authorized by law, shall, not later than the second Monday of September in each year, certify said levies to the board of county commissioners in each county in which the district may lie. Said certification shall show the name and number of the school district, the school fiscal year for which such levies are to be made, and shall list separately each levy if more than one (1), and the purpose of each thereof. In certifying the levy required to service bond issues, the board of trustees shall report the amount of available moneys in the "bond interest and redemption fund" at the time of certification and the amount required to service bond issues in the ensuing fiscal year in addition to the levy determined for such purpose. [1963, ch. 13, § 97, p. 27; am. 1973, ch. 282, § 2, p. 597; am. 1974, ch. 4, § 1, p. 20.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1973, ch. 282 declared an emergency. Approved March 16, 1973. Section 3 of S.L. 1974, ch. 4, declared an emergency. Approved February 14, 1974.

33-808. Notice of adjustment to market value for assessment purposes upon termination of a revenue allocation area. — (1) A charter district with a maintenance and operation levy in the immediately previous year that shall adjust its market value for assessment purposes in accordance with the provisions of section 33-802(6), Idaho Code, relating to termination of a revenue allocation area, shall advertise its action by publishing in at least the newspaper of largest paid circulation published in the county of the district, or if there is no such newspaper, then in a newspaper published nearest to the district where the advertisement is required to be published.

(2) For purposes of this section, the definition of "newspaper" shall be as established in sections 60-106 and 60-107, Idaho Code; provided further,

that the newspaper of largest circulation shall be established by the statement of average annual paid weekday circulation listed on the newspaper's sworn statement of ownership that was filed with the United States post office on a date most recently preceding the date on which the advertisement required in this section is to be published. The advertisement shall be run when the school district ascertains that it will adjust its market value for assessment purposes in accordance with the provisions of section 33-802(6), Idaho Code, relating to termination of a revenue allocation area, and shall be published once a week for two (2) weeks following action by the board of trustees.

(3) The form and content of the notice shall be substantially as follows:

NOTICE OF PROPERTY TAX ADJUSTMENT BY SCHOOL BOARD

The (insert name of the school district) hereinafter the "District," has increased its market value for assessment purposes as of December 31, ..., by the amount of the increment value of the (insert name of Redevelopment Agency Revenue Allocation Area) on such date, in accordance with the provisions of Section 33-802, Idaho Code, because the revenue allocation area gave notice of termination pursuant to Section 50-2903, Idaho Code, and as a result thereof property taxes on the increment value of the revenue allocation area will not be collected and distributed to the District. Section 33-802, Idaho Code, permits the District to replace those funds by adjusting its market value as described herein. The total amount of dollars in property taxes to be directly collected by the District pursuant to this action is estimated to be \$......

[I.C., § 33-808, as added by 2005, ch. 191, § 2, p. 591; am. 2006 (1st E.S.), ch. 1, § 5.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted "A charter district with a maintenance and operation levy in the immediately previous year" for "A school district" at the beginning of Subsection (1) and updated references to section 33-802 in Subsections (1)

and (2), necessitated by the amendment of that section.

Compiler's Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

CHAPTER 9

SCHOOL FUNDS

SECTION.

- 33-901. School plant facilities reserve fund.
- 33-902. Public school permanent endowment fund.
- 33-902A. Public school earnings reserve fund.
- 33-903. Public school income fund.
- 33-904. County school fund.
- 33-905. School district building account — Payments to account — Mon-

SECTION.

- eyes appropriated to state board — Application for moneys — Payments to districts — Reports on applications — Uses of moneys.
- 33-906. Bond levy equalization support program.
- 33-906A. Bond levy equalization fund.
- 33-906B. Value index calculation.

SECTION.

33-907. Public education stabilization fund.

33-908. [Reserved.]

33-909. Public school facilities cooperative funding program — Fund created.

SECTION.

33-910. Secure rural schools and community self-determination act phase out funding. [Effective until July 1, 2012.]

33-901. School plant facilities reserve fund. — The board of trustees of any school district may create and establish a school plant facilities reserve fund by resolution adopted at any regular or special meeting of the board. All moneys for said fund accruing from taxes levied under section 33-804, Idaho Code, together with interest accruing from the investment of any moneys in the fund and any moneys allowed for depreciation of school plant facilities as are appropriated from the general fund of the district, shall be credited by the treasurer to the school plant facilities reserve fund.

Disbursements from said fund may be made from time to time as the board of trustees may determine, for purposes authorized in section 33-1102, Idaho Code, and for lease and lease purchase agreements for such purposes and to repay loans from commercial lending institutions extended to pay for the construction of school plant facilities, but no expenditure for remodeling existing buildings shall be authorized and made unless the estimated cost thereof shall exceed five thousand dollars (\$5,000). Lease purchase agreements shall not extend beyond the period designated for any existing school plant facilities reserve fund levy. Expenditures may also be made from this fund for participation by the school district in any local improvement district in which the school district may be situate, but any such participation shall not create a lien upon any of the property owned by the school district.

Should any school district having a balance in its school plant facilities reserve fund be consolidated with one or more school districts to form a new school district, the moneys in such fund shall be used to retire any bonds issued by it and outstanding at the time of the consolidation. If there are no bonds outstanding, any balance in its school plant facilities reserve fund shall accrue to the new district to be added to or to create and establish a school plant facilities reserve fund.

Should any school district having a balance in its school plant facilities reserve fund be divided so as to create two (2) or more new districts the said fund may be used to retire any bonds issued by it and outstanding at the time of the division, or the said fund may be divided among the new school districts, as may be approved by the electors at the time of the division. If the fund is divided among the new districts, a school plant facilities reserve fund is thereby created and established for each district.

The board of trustees of any school district having a school plant facilities reserve fund created and established under any of the provisions of this section, may discontinue the same by resolution adopted at any regular meeting of the board. Upon such discontinuance, any balance in the fund shall be used to retire any outstanding bonds, if any; otherwise, the balance may be transferred to the general fund of the district.

Moneys in the school plant facilities reserve fund being held for future use may be invested in the manner of section 57-127, Idaho Code.

A detailed financial report of the operations in and the condition of the school plant facilities reserve fund shall be included in the annual report of each district. Forms for such reporting shall be provided by the state board of education. Such report shall be published as provided by law for the publication of annual reports of school districts. [1963, ch. 13, § 117, p. 27; am. 1970, ch. 167, § 1, p. 493; am. 1975, ch. 136, § 1, p. 300.]

STATUTORY NOTES

Cross References. — Plant facilities reserve fund tax, § 33-804.

33-902. Public school permanent endowment fund. — (1) There is established in the state treasury the public school permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

- (a) Proceeds from the sale of lands granted to the state by the federal government, known as public school endowment lands, and lands granted in lieu of public school endowment school lands;
- (b) Lands, money or other property acquired by gift or grant from any person or corporation or under any law or grant of the federal government for general educational purposes;
- (c) All other grants of lands or money made to the state from the federal government for general educational purposes where no other purpose is indicated in the grant;
- (d) All estates or distributive shares of estates that may escheat to the state;
- (e) All unclaimed shares and dividends of any corporation incorporated under the laws of the state;
- (f) Proceeds of royalties arising from the extraction of minerals on public school land owned by the state;
- (g) Other proceeds and avails as are required by law of the federal government or of the state of Idaho to be made a part of the fund; and
- (h) Moneys allocated from the public school earnings reserve fund.

(2) Public school endowment land sale proceeds may be deposited into the land bank fund established in section 58-133, Idaho Code, to be used to acquire other lands within the state for the benefit of the endowment beneficiaries. If proceeds from the sale of public school endowment lands are not used to acquire other lands in accordance with section 58-133, Idaho Code, the proceeds from the sale shall be deposited into the public school permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the public school permanent endowment fund shall be distributed according to the provisions of section 57-723A, Idaho Code. [I.C., § 33-902, as added by 1998, ch. 256, § 7, p. 825.]

STATUTORY NOTES

Cross References. — Public school earnings reserve fund, § 33-902A.

State board of land commissioners, Art. IX, § 7, Idaho Const. and § 58-101 et seq.

Prior Laws. — Former § 33-902, which comprised 1963, ch. 13, § 119, p. 27; am. 1976, ch. 28, § 1, p. 63; am. 1984, ch. 180, § 1, p. 426; am. 1990, ch. 377, §§ 1, 4, p. 1041, was repealed by S.L. 1998, ch. 256, § 6, effective July 1, 2000.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of

Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met, therefore that act is effective July 1, 2000.

33-902A. Public school earnings reserve fund. — (1) There is established in the state treasury the public school earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The public school earnings reserve fund shall consist of the following:

- (a) All earnings of the public school permanent endowment fund;
- (b) Proceeds of the sale of timber on public school endowment lands;
- (c) Proceeds of leases of public school endowment lands;
- (d) Proceeds of interest charged upon deferred payments on public school endowment lands or timber on those lands;
- (e) Earnings on contracts for the sale of timber and the sale of lands related to the public school endowment; and
- (f) All other proceeds received from the use of public school endowment lands and not otherwise designated for deposit in the public school permanent endowment fund.

(2) Moneys shall be distributed out of the public school earnings reserve fund only to support the beneficiaries of the public school endowment, including distributions by the state board of land commissioners to the public school permanent endowment fund and the public school income fund; provided, that funds shall not be appropriated by the legislature from the public school earnings reserve fund except to pay for administrative costs incurred managing the assets of the public school endowment including, but not limited to, real property and monetary assets. [I.C., § 33-902A, as added by 1998, ch. 256, § 8, p. 825.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

Public school income fund, § 33-903.

State board of land commissioners, Art. IX, § 7, Idaho Const. and § 58-101 et seq.

Effective Dates. — S.L. 1998, ch. 256,

§ 63 provides: "This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

JUDICIAL DECISIONS

Cited in: State Endowment Fund Inv. Bd.
v. Crane, 135 Idaho 667, 23 P.3d 129 (2001).

33-903. Public school income fund. — (1) The public school income fund is that fund in the treasury of the state of Idaho to which are credited the following:

- (a) Moneys distributed from the public school earnings reserve fund and other sources the legislature deems appropriate;
- (b) Proceeds of all state taxes levied for public school purposes;
- (c) Grants of moneys from the federal government for public school purposes when other disposition is not specified by law;
- (d) Ninety percent (90%) of any moneys received by any department of state government from the federal government from sales, royalties, bonuses or rentals of oil, gas or mineral lands;
- (e) Legislative appropriations in support of the public schools, and other moneys required by the law of the federal government or of the state of Idaho to be made a part of and credited to the fund.

(2) Earnings on the investment of idle moneys in the public school income fund shall be paid to the public school income fund.

(3) Moneys in the public school income fund shall be used for the benefit of beneficiaries of the public school endowment and distributed to current beneficiaries of the public school endowment pursuant to legislative appropriation. [1963, ch. 13, § 119, p. 27; am. 1976, ch. 28, § 1, p. 63; am. 1984, ch. 180, § 1, p. 426; am. 1990, ch. 377, §§ 1, 4, p. 1041; am. 1998, ch. 256, § 9, p. 825.]

STATUTORY NOTES

Cross References. — Public school earnings reserve fund, § 33-902A.

Public school permanent endowment fund, § 33-902.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admis-

sion Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the

foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improve-

ment funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-904. County school fund. — The county school fund is that fund in the treasury of each county in the state to which are credited the proceeds of moneys collected from fines, forfeitures or breaches of the penal laws of the state when other disposition is not provided by law; and such other proceeds and avails as may be required by law to be credited thereto. [1963, ch. 13, § 120, p. 27; am. 1967, ch. 243, § 4, p. 707; am. 1978, ch. 291, § 1, p. 713; am. 1979, ch. 254, § 4, p. 661.]

STATUTORY NOTES

Cross References. — Apportionment of county school fund, § 33-1012.

Fines and forfeitures set apart for school fund, § 19-4701.

Effective Dates. — Section 5 of S.L. 1967, ch. 243 read: "This act shall be and become effective on and after the first day of July, 1967; but any apportionments made from the public school income fund, or from any county school fund, from moneys accumulated in said funds, including tax receipts which may not have been transferred prior to July 4, 1967,

shall be apportioned under the law in effect prior to said date."

Section 7 of S.L. 1978, ch. 291 read: "An emergency existing therefor, which emergency is hereby declared to exist, sections 1, 2, 3 and 4 of this act shall be in full force and effect on and after their passage and approval, and retroactively to January 1, 1978. Sections 5 and 6 of this act shall be in full force and effect on and after July 1, 1978." Became law without governor's signature. Received by governor March 18, 1978.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Buildings in Another District.

School district could not expend its funds in completing school building on property of an-

other district under an arrangement for joint use of building. *Olmstead v. Carter*, 34 Idaho 276, 200 P. 134 (1921).

33-905. School district building account — Payments to account — Moneys appropriated to state board — Application for moneys — Payments to districts — Reports on applications — Uses of moneys. — (1) The state of Idaho, in order to fulfill its responsibility to establish and maintain a general, uniform and thorough system of public, free common schools, hereby creates and establishes the school district building account in the state treasury. The school district building account shall have paid into it such appropriations or revenues as may be provided by law.

(2) By not later than August 31, moneys in the account pursuant to distribution from section 67-7434, Idaho Code, the lottery dividends and interest earned thereon, shall be distributed to each of the several school districts, in the proportion that the average daily attendance of that district for the previous school year bears to the total average daily attendance of the state during the previous school year. For the purposes of this subsection (2) only, the Idaho school for the deaf and the blind shall be considered a

school district, and shall receive a distribution based upon the average daily attendance of the school. Average daily attendance shall be calculated as provided in section 33-1002(3), Idaho Code.

(3) Any other state moneys that may be made available shall be distributed to meet the requirements of section 33-1019, Idaho Code. If the amount of such funds exceeds the amount needed to meet the provisions of section 33-1019, Idaho Code, then the excess balance shall be transferred to the public education stabilization fund.

(4) All payments from the school district building account shall be paid out directly to the school district in warrants drawn by the state controller upon presentation of proper vouchers from the state board of education. Pending payments out of the school district building account, the moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other idle moneys in the state treasury. Interest earned on the investments shall be returned to the school district building account.

(5) Payments from the school district building account received by a school district shall be used by the school district for the purposes authorized in section 33-1019, Idaho Code, up to the level of the state match so required. Any payments from the school district building account received by a school district that are in excess of the state match requirements of section 33-1019, Idaho Code, may be used by the school district for the purposes authorized in section 33-1102, Idaho Code. [I.C., § 33-905, as added by 1977, ch. 67, § 1, p. 128; am. 1988, ch. 251, § 1, p. 484; am. 1989, ch. 123, § 1, p. 271; am. 1990, ch. 377, §§ 2, 5, p. 1041; am. 1991, ch. 110, § 2, p. 235; am. 1994, ch. 180, § 45, p. 420; am. 1994, ch. 345, § 1, p. 1088; am. 1996, ch. 121, § 1, p. 435; am. 1998, ch. 41, § 1, p. 173; am. 2006, ch. 311, § 3, p. 957; am. 2006 (1st E.S.), ch. 1, § 6.]

STATUTORY NOTES

Cross References. — Public education stabilization fund, 33-907.

Amendments. — The 2006 amendment, by ch. 311, in subsection (1), substituted “in order to fulfill” for “recognizing,” and deleted “in an effort to partially fulfill this responsibility” following “common schools”; deleted former subsections (2) and (3), which pertained to the appropriation of monies in the school district building account relevant to this section and chapters 35 and 36 of title 67, and application by the board of trustees of any school district to the state board of education to receive payments from the school district building account, respectively, and made related redesignations and internal reference corrections; added subsection (3); in subsection (5), substituted “shall be used” for “may be used,” corrected the section reference, inserted “up to the level of the state match so required,” and added the last sentence; and deleted subsection (7), which pertained to reports by the school district, submitted no

later than December 1, regarding projects on which monies received from the school district were expended as well as reports on planned uses for the monies received, and transmittal of summarization reports by the state department of education to the legislature no later than January 15 of the following year.

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, updated the reference to section 33-1002 at the end of Subsection (2), necessitated by the amendment of that section.

Legislative Intent. — Section 1 of S.L. 2006, ch. 311 provided “LEGISLATIVE FINDINGS AND INTENT. The Legislature hereby finds that:

“(1) Section 1, Article IX, of the Constitution of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal*

Educational Opportunity v. Evans, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

"(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included 'a safe environment conducive to learning' among the statutory definitions of thoroughness.

"(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of 'a safe environment conducive to learning' and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

"(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

"(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court's February 5, 2001, decision and said:

"In sum, the evidence in the record clearly supports the district court's 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature's duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: '[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.' Thus, it is the duty of the

State, and not this Court or the local school districts, to meet this constitutional mandate.

"(7) In response to the Supreme Court's 2005 decision, and mindful that the Supreme Court has recognized the Legislature's efforts, following the district court's decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature's responsibility under Section 1, Article IX, of the Constitution of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

"(8) In proposing this Act, it is the intent of the Legislature to:

"(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

"(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district's relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

"(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

"(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

"(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to

arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay."

Compiler's Notes. — Section 13 of S.L. 2006, ch. 311 provided: "Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect."

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006.'"

Effective Dates. — Section 7 of S.L. 1990,

ch. 377 provided that §§ 1, 2 and 3 of the act should be in effect on and after July 1, 1990 and that §§ 4, 5 and 6 should be in effect on July 1, 1991.

Section 6 of S.L. 1991, ch. 110 declared an emergency and provided that § 1 should be in effect March 27, 1991. Approved March 27, 1991.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 45 of S.L. 1994, ch. 180 became effective January 2, 1995.

33-906. Bond levy equalization support program. — (1) Pursuant to section 33-906B, Idaho Code, school districts with a value index below one (1) shall be eligible to receive additional state financial assistance for the cost of annual bond interest and redemption payments made on bonds passed on or after September 15, 2002. However, any school district with a value index of less than one and one-half (1.5), shall receive no less than ten percent (10%) of the interest cost portion of the annual bond interest and redemption payment for bonds passed on or after September 15, 2002. The state department of education shall disburse such funds to school districts from moneys appropriated from the bond levy equalization fund. The department shall disburse the funds by no later than September 1 of each year for school districts in which voters have approved the issuance of qualifying bonds by no later than January 1 of that calendar year, and which are certifying a qualifying bond interest and redemption payment for the fiscal year in which the disbursement is made. For districts with a value index below one (1), the percentage of each annual bond interest and redemption payment that is paid by the state shall be determined by dividing the difference between one (1) and the school district's value index by one (1).

(2) For the purposes of this section, the annual bond interest and redemption payment shall be determined by dividing the total payment amounts by the number of fiscal years in which payments are to be made. The interest cost portion of the annual bond interest and redemption payment shall be determined by dividing the total interest paid by the number of fiscal years in which payments are to be made. For school districts not qualifying for a state payment in the first year of the bond interest and redemption payment schedule, due solely to the January 1 eligibility deadline, the state department of education shall distribute an additional payment in the next fiscal year, in the amount of such funds that the school district would have otherwise qualified for in the current fiscal year.

(3) The provisions of this section may not be utilized to refinance existing debt or subsidize projects previously subsidized by state grants, unless the

existing debt being refinanced is a bond passed on or after September 15, 2002; provided however, that any school district that has issued qualifying bonds prior to June 30, 2004, in conformance with this section shall not be deemed to be refinancing existing debt when the qualifying bonds are utilized to finance the acquisition of public school facilities previously leased or financed through means other than the issuance of general obligation bonds approved by a two-thirds (2/3) vote at an election called for that purpose subject to subsection (5) of this section.

(4) School districts shall annually report the status of all qualifying bonds to the state department of education by January 1 of each year, including bonds approved by the voters, but not yet issued. Information submitted shall include the following:

- (a) The actual or estimated bond interest and redemption payment schedule;
- (b) Any qualifying bond that has been paid off;
- (c) Other information as may be required by the state department of education.

(5) No school district project eligible for participation in the bond levy equalization support program shall be deemed ineligible for participation due to that school district project's eligibility and prior participation in the safe school facilities loan and grant program or the Idaho safe schools facilities program under section 33-804A, 33-1017 or 33-1613, Idaho Code, provided that:

- (a) Such school district notifies the state department of education of its desire and eligibility to participate in the bond levy equalization support program; and
- (b) Such school district shall receive no state financial assistance for the project under the bond levy equalization support program until the amount to which it would otherwise have been entitled to receive shall equal the amounts received by the school district under the safe school facilities loan and grant program or the Idaho safe schools facilities program under section 33-804A, 33-1017 or 33-1613, Idaho Code.

(6) Any school district formed as a result of the consolidation of two (2) or more school districts that passes an eligible bond within three (3) years of the successful consolidation election shall participate in the bond levy equalization support program at the district's actual value index minus twenty-five hundredths (.25). This adjustment shall apply for the duration of the bond interest and redemption payment schedule. If a school district advantaged by this subsection (6) deconsolidates either during the applicable bond interest and redemption payment schedule, or within a three (3) year period thereafter, each deconsolidated district shall, upon deconsolidation, repay to the bond levy equalization fund all additional subsidies received pursuant to this subsection (6). The proportions owed by each deconsolidated district shall be determined by the proportion that each district's market value for assessment purposes bears to the whole. [I.C., § 33-906, as added by 2002, ch. 159, § 2, p. 464; am. 2003, ch. 268, § 2, p. 717; am. 2004, ch. 198, § 1, p. 610; am. 2006, ch. 311, § 4, p. 957; am. 2007, ch. 79, § 4, p. 209; am. 2007, ch. 354, § 5, p. 1051; am. 2008, ch. 70, § 1, p. 184.]

STATUTORY NOTES

Cross References. — Bond levy equalization fund, § 33-906A.

Amendments. — The 2006 amendment, by ch. 311, in subsection (1), inserted “with a value index of less than one and one-half (1.5)” in the second sentence, and deleted “provided that the state shall pay for no more than the interest cost portion of the annual bond interest and redemption payment, and each school district shall receive no less than ten percent (10%) of the interest cost portion of the qualifying bond interest and redemption payment” from the end.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 79, added subsection (6).

The 2007 amendment, by ch. 354, inserted “unless the existing debt being refinanced is a bond passed on or after September 15, 2002” in the first sentence in subsection (3).

The 2008 amendment, by ch. 70, in the introductory paragraph in subsection (5), inserted “project” and substituted “district project’s eligibility” for “district’s eligibility”; and in paragraph (5)(b), inserted “for the project.”

Legislative Intent. — Section 1 of S.L. 2006, ch. 311 provided “LEGISLATIVE FINDINGS AND INTENT. The Legislature hereby finds that:

“(1) Section 1, Article IX, of the Constitution of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the stat-

utory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

“In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: ‘[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’ Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under Section 1, Article IX, of the Constitution of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

"(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

"(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district's relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

"(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

"(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially

funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

"(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay."

Effective Dates. — Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

33-906A. Bond levy equalization fund. — There is hereby created in the state treasury a bond levy equalization fund. This fund shall contain such moneys as may be directed pursuant to appropriation. Moneys in the fund shall be used exclusively to make the payments authorized by the bond levy equalization program created in section 33-906, Idaho Code. Moneys in the fund are hereby continuously appropriated for the purposes stated in section 33-906, Idaho Code, and shall only be expended for the purposes stated therein. [I.C., § 33-906A, as added by 2002, ch. 159, § 3, p. 464; am. 2006, ch. 423, § 3, p. 1307.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 423, added the last sentence.

Compiler's Notes. — Section 2 of S.L. 2006, ch. 423, provides: "Of the General Fund moneys appropriated in Section 1 of this act, \$1,000,000 is hereby transferred and appropriated to the Bond Levy Equalization Fund.

The provisions of Section 33-905, Idaho Code, notwithstanding, of the moneys appropriated in Section 1 of this act, the amount necessary to fund the provisions of Section 33-906, Idaho Code, is hereby transferred and appropriated from the School District Building Account to the Bond Levy Equalization Fund."

33-906B. Value index calculation. — The state department of education shall establish a value index for each school district, based on each school district's market value per support unit for equalization purposes, the average annual seasonally-adjusted unemployment rate in the county in which a plurality of the school district's market value for assessment purposes of taxable property is located and the per capita income in the county in which a plurality of the school district's market value for assessment purposes is located. The value index for each school district shall be calculated as the sum of the following three (3) components:

(1) The state department of education shall annually calculate each school district's market value per support unit, based on the market values that would be used to calculate a bond levy, and the statewide average. The first portion of the value index shall be calculated by dividing the school district's figure by the statewide average figure and dividing the result of this calculation by two (2).

(2) The second portion of the value index shall be calculated by dividing the statewide unemployment rate by the unemployment rate in the county in which a plurality of the school district's market value for assessment purposes of taxable property is located, and dividing the result of this calculation by four (4). For the purposes of this subsection, the statewide unemployment rate and county unemployment rates shall be based on the most recent average annual seasonally-adjusted unemployment rate data reported by the United States department of labor, for which there is a complete calendar year of data.

(3) The third portion of the value index shall be calculated by dividing the county per capita income in the county in which a plurality of the school district's market value for assessment purposes of taxable property is located by the statewide per capita income, and dividing the result of this calculation by four (4). For the purposes of this subsection, the statewide per capita income and county per capita income shall be based on the most recent data reported by the United States department of commerce, for which there is a complete calendar year of data.

If a bond is passed by a subdistrict created pursuant to section 33-351, Idaho Code, the index used shall be that of the school district. For subdistricts created as a result of consolidation, for the purposes of retiring prior bonded indebtedness, pursuant to section 33-311, Idaho Code, the subdistrict shall retain the value index factor calculated in subsection (1) of this section, as such factor was calculated in the subdistrict's last fiscal year as a separate school district. The remaining components of the subdistrict's value index calculation shall be that of the consolidated school district, as calculated each year. [I.C., § 33-906B, as added by 2002, ch. 159, § 4, p. 464; am. 2007, ch. 79, § 7, p. 209; am. 2007, ch. 144, § 1, p. 419.]

STATUTORY NOTES

Amendments. — This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 79, added the last paragraph.

The 2007 amendment, by ch. 144, in subsection (1), in the first sentence, substituted "each school district's market value" for "the market value" and "based on the market values that would be used to calculate a bond levy" for "that is used to equalize school fund-

ing for each school district in the state," and in the second sentence, twice substituted "figure" for "market value for equalization purposes per support unit," or similar language.

Effective Dates. — Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

Section 3 of S.L. 2007, ch. 144 provided that the act should take effect on and after July 1, 2007.

33-907. Public education stabilization fund. — There is hereby created in the state treasury a fund to be known as the public education stabilization fund, which shall function as a fund detail of the public school

income fund. The fund shall consist of moneys transferred to the fund according to the provisions of sections 33-905 and 33-1018, Idaho Code, and any other moneys made available through legislative transfers or appropriations. Moneys in the fund are hereby continuously appropriated for the purposes stated in sections 33-1018 and 33-1018B, Idaho Code, and shall only be expended for the purposes stated in sections 33-1018, 33-1018A and 33-1018B, Idaho Code. Any accumulated balances in the fund that are in excess of eight and one-third percent (8.334%) of the current fiscal year's total appropriation of state funds for public school support shall be transferred to the bond levy equalization fund. Interest earned from the investment of moneys in the fund shall be retained in the fund. [I.C., § 33-907, as added by 2003, ch. 372, § 8, p. 986; am. 2006, ch. 311, § 5, p. 957; am. 2006 (1st E.S.), ch. 1, § 7.]

STATUTORY NOTES

Cross References. — Bond levy equalization fund, § 33-906A.

Public school income fund, § 33-903.

Amendments. — The 2006 amendment, by ch. 311, inserted the references to sections 33-905 and 33-1018B, and substituted “five percent” for “three percent.”

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “eight and one-third percent (8.334%)” for “five percent (5%)” and “total appropriation of state funds” for “total general fund appropriation” in the next-to-last sentence and substituted “shall be retained in the fund” for “shall be credited to the public school income fund” in the last sentence.

Legislative Intent. — Section 1 of S.L. 2006, ch. 311 provided “LEGISLATIVE FINDINGS AND INTENT. The Legislature hereby finds that:

“(1) Section 1, Article IX, of the Constitution of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included ‘a

safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

“In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of

our constitution means what it says: '[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.' Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

"(7) In response to the Supreme Court's 2005 decision, and mindful that the Supreme Court has recognized the Legislature's efforts, following the district court's decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature's responsibility under Section 1, Article IX, of the Constitution of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

"(8) In proposing this Act, it is the intent of the Legislature to:

"(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

"(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district's relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

"(c) Establish an ongoing School Facilities Cooperative Funding Program to as-

sist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

"(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

"(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay."

Compiler's Notes. — Section 13 of S.L. 2006, ch. 311 provided: "Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect."

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

33-908. [Reserved.]

33-909. Public school facilities cooperative funding program — Fund created. — (1) In fulfillment of the constitutional requirement to provide a general, uniform and thorough system of public, free common schools, it is the intent of the state of Idaho to advance its responsibility for providing a safe environment conducive to learning by providing a public school facilities funding program to enable qualifying school districts to address unsafe facilities identified as unsafe under the standards of the Idaho uniform school building safety act.

(2) Participation in the program, for the purpose of obtaining state financial support to abate identified school building safety hazards, requires submission of an application to the public school facilities cooperative funding program panel. Application can be made by:

(a) Any school district that has failed to approve at least one (1) or more bond levies for the repair, renovation or replacement of existing unsafe facilities, within the two (2) year period immediately preceding submission of the application; or

(b) The administrator of the division of building safety, for a school district that has failed to address identified unsafe facilities as provided in chapter 80, title 39, Idaho Code.

(3) There is hereby created within the office of the state board of education the Idaho public school facilities cooperative funding program panel, hereafter referred to as the panel. The panel shall consist of the administrator of the division of building safety, the administrator of the division of public works and the executive director of the state board of education, or a designee appointed by a panel member. It shall be the duty of the panel to consider all applications made to it, and to either approve, modify or reject an application based on the most economical solution to the problem, as analyzed within a projected twenty (20) year time frame.

(4) The application shall contain the following information:

(a) The identified school building safety hazards and such other information necessary to document the deficiencies;

(b) The school district's plan for abating the defects, including costs and sources and amounts of revenue available to the school district;

(c) The market value for assessment purposes of the school district; and

(d) A detailed accounting of all bond and plant facility levies of the school district and the revenues raised by such levies.

For applications initiated by the administrator of the division of building safety pursuant to subsection (2)(b) of this section, the school district shall provide the information required in this subsection (4) if such information is not available to the administrator.

(5) In considering an application, the panel shall determine whether the plan as proposed is acceptable, or is acceptable with modifications as determined by the panel, or should be rejected. The panel shall notify the applicant of its decision, in writing, within sixty (60) days of receiving the application. At the same time the panel notifies the applicant, the panel shall send notification of an approved application or a modified application to the state board of education, along with the panel's specifications for the project and its cost.

(6) If an application received from a school district is accepted or modified by the panel, the local board of trustees of that school district, at the next election held pursuant to section 34-106, Idaho Code, shall submit the question to the qualified electors of the school district of whether to approve a bond in the amount of the cost of the project as approved by the panel.

(7) Within thirty-five (35) calendar days of receiving notification from the panel that an application submitted by the administrator of the division of building safety pursuant to subsection (2)(b) of this section has been approved or modified by the panel, or within thirty-five (35) calendar days of receiving certification from the panel that the question submitted to the electorate pursuant to subsection (6) of this section was not approved in the election, the state board of education shall appoint a district supervisor for

interim state supervision of the local school district. The district supervisor shall be responsible for ensuring that the project, as approved by the panel, is completed and shall regularly report to the panel in a manner as determined by the panel upon approval of the project. The district supervisor shall also have the authority granted to said position by the provisions of section 6-2212, Idaho Code. A district supervisor's term of service shall continue for the duration of the project, and such person appointed as a district supervisor shall serve at the pleasure of the state board of education.

(8) Upon approval of an application or a modified application submitted by the administrator of the division of building safety pursuant to subsection (2)(b) of this section, or upon receipt of certification from the county that the question submitted to the electorate pursuant to subsection (6) of this section was not approved in the election, the panel shall certify the cost of the project, as approved by the panel, to the state department of education.

(a) The total cost of the project shall initially be paid by the state from the public school facilities cooperative fund.

(b) The district's share of costs that may be repaid through the levy provisions of this section shall not exceed the district's share of bond payment costs as calculated for the bond levy equalization support program in the fiscal year in which the application is made. Interest shall be charged on the unpaid balance of the district's share of costs, as such balance exists at the end of each fiscal year, at the rate of interest earned by the state treasurer on the investment of idle funds in that fiscal year.

(c) It shall be the responsibility of the state department of education to calculate a state-authorized plant facilities levy rate in accordance with the provisions of subsection (9) of this section, which, when imposed over a maximum period not to exceed twenty (20) years, may yield the revenues needed to repay the school district's share of the cost of the project.

(d) The levy rate calculated by the state department of education shall be certified by the department to the county or counties wherein the boundaries of the school district are contained, for assessment of the levy and collection of the revenues by such county or counties in the manner provided by law. The revenues collected by imposition of the state-authorized plant facilities levy shall be remitted to the state treasurer for deposit to the public school facilities cooperative fund.

(9) The annual state-authorized plant facilities levy rate shall be limited to the greater of:

(a) The difference between the school district's combined bond and plant facilities levy rates, and the statewide average bond and plant facility levy rates; or

(b) The statewide average plant facility levy rate.

The initial levy rate so calculated shall be established as the minimum levy rate that shall be imposed for the amount of time required to reimburse the state for the school district's share of the project cost, but not to exceed twenty (20) years, even if this period would not provide reimbursement of the entire amount of the school district's share of the cost of the project. The state department of education is authorized and directed to recalculate the

levy rate on an annual basis, and is authorized to increase or decrease the levy rate according to the scheduled payback, but the levy rate shall not be less than the levy rate initially imposed. Provided however, if the levy rate calculated is estimated to raise more money than would be necessary to repay the district's share of costs, then the state department of education shall certify to the county or counties wherein the boundaries of the school district are contained, the moneys necessary to repay the district's share of costs.

(10) There is hereby created in the state treasury a public school facilities cooperative fund. The fund shall contain such moneys as may be directed pursuant to appropriation. Moneys in the fund shall be used exclusively to finance the public school facilities cooperative funding program, and are hereby continuously appropriated for such purposes as authorized by this section. Moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other idle moneys in the state treasury. Interest earned on the investments shall be credited to the school district building account. [I.C., § 33-909, as added by 2006, ch. 311, § 6, p. 957.]

STATUTORY NOTES

Cross References. — Administrator of the division of building safety, § 54-2607.

Administrator of the division of public works, § 67-5705.

Executive director of the state board of education, § 33-102A.

Idaho uniform building safety act, § 39-8001 et seq.

School district building account, § 33-905.

Legislative Intent. — Section 1 of S.L. 2006, ch. 311 provided "LEGISLATIVE FINDINGS AND INTENT. The Legislature hereby finds that:

"(1) Section 1, Article IX, of the Constitution of the state of Idaho provides that 'it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.'

"(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

"(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included 'a

safe environment conducive to learning' among the statutory definitions of thoroughness.

"(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of 'a safe environment conducive to learning' and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

"(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

"(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court's February 5, 2001, decision and said:

"In sum, the evidence in the record clearly supports the district court's 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legis-

lature's duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: "[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.' Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

"(7) In response to the Supreme Court's 2005 decision, and mindful that the Supreme Court has recognized the Legislature's efforts, following the district court's decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature's responsibility under Section 1, Article IX, of the Constitution of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

"(8) In proposing this Act, it is the intent of the Legislature to:

"(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

"(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district's relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program,

enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

"(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

"(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

"(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay."

Compiler's Notes. — Section 13 of S.L. 2006, ch. 311 provided: "Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect."

33-910. Secure rural schools and community self-determination act phase out funding. [Effective until July 1, 2012.] — (1) If the state superintendent of public instruction determines that the federal government has not reauthorized the secure rural schools and community self-determination act of 2000, public law 106-393, or substantially similar legislation, by February 10, 2009, the legislature shall appropriate from the public education stabilization fund to the state superintendent of public instruction for distribution to eligible school districts an amount that is equal to seventy percent (70%) of the distribution made to school districts in December 2007 by eligible counties under title I, public law 106-393. The distributions to eligible school districts shall be based on the same proportion of the total that each school district received during the December 2007

distribution made to school districts by eligible counties under title I, public law 106-393.

(2) For each following fiscal year that the state superintendent of public instruction determines that the federal government has not reauthorized the secure rural schools and community self-determination act of 2000, public law 106-393, or substantially similar legislation, by February 10 of that year, the state shall appropriate from the public education stabilization fund:

(a) For fiscal year 2010, an amount that is equal to fifty-five percent (55%) of the distribution made to school districts in December 2007 by eligible counties under title I, public law 106-393.

(b) For fiscal year 2011, an amount that is equal to forty percent (40%) of the distribution made to school districts in December 2007 by eligible counties under title I, public law 106-393.

(c) For fiscal year 2012, an amount that is equal to twenty-five percent (25%) of the distribution made to school districts in December 2007 by eligible counties under title I, public law 106-393.

(d) For fiscal year 2013, there shall be no funding under the provisions of this section.

(3) If the superintendent of public instruction determines that the federal government has reauthorized the secure rural schools and community self-determination act of 2000, public law 106-393, or substantially similar legislation, after February 10, 2009, and that the first payment to school districts shall take place on or prior to July 15, 2009, then each school district shall return all state moneys distributed pursuant to this section for deposit to the public education stabilization fund, up to a maximum of the amount of federal money so received.

(4) If the superintendent of public instruction determines that the federal government has reauthorized the secure rural schools and community self-determination act of 2000, public law 106-393, or substantially similar legislation, after February 10 of any fiscal year after 2009, and that the first payment to school districts shall take place on or prior to July 15 of that year, then each school district shall return all state moneys distributed in that fiscal year pursuant to this section for deposit to the public education stabilization fund, up to a maximum of the amount of federal money so received. [I.C., § 33-910, as added by 2008, ch. 384, § 2, p. 1057.]

STATUTORY NOTES

Cross References. — Public education, stabilization fund, § 33-907.

State superintendent of public instruction, § 67-1501 et seq.

Compiler's Notes. — The secure rural schools and community self-determination act of 2000, public law 106-393, appears generally as notes to 16 U.S.C.S. § 500.

Section 1 of S.L. 2008, ch. 384 provided "It is the finding of the Legislature that there remains uncertainty in the reauthorization of the federal Secure Rural Schools and Community Self-Determination Act by the Congress

of the United States. If the federal government has not reauthorized the Secure Rural Schools and Community Self-Determination Act, Public Law 106-393, or substantially similar legislation, it will have negative effects on certain Idaho school districts and in this case the Legislature is prepared to temporarily mitigate the impact on those Idaho school districts and to offset the loss of federal funds previously authorized under the Secure Rural Schools and Community Self-Determination Act, Public Law 106-393."

Effective Dates. — Section 3 of S.L. 2008,

ch. 384 provided that the act should take effect on and after July 1, 2008, and shall be of no force and effect on and after July 1, 2012.

CHAPTER 10

FOUNDATION PROGRAM — STATE AID — APPORTIONMENT

SECTION.

- 33-1001. Definitions.
- 33-1002. Educational support program.
- 33-1002A. [Repealed.]
- 33-1002B. Pupil tuition-equivalency allowances.
- 33-1002C. Summer school program support units — Alternative secondary school — Juvenile detention facility.
- 33-1002D. [Repealed.]
- 33-1002E. Pupils attending school in another state.
- 33-1002F. Alternative school report.
- 33-1002G. Professional-technical school added cost units.
- 33-1003. Special applications of educational support program.
- 33-1003A. Calculation of average daily attendance.
- 33-1003B. [Repealed.]
- 33-1003C. Special application — Technological instruction.
- 33-1004. Staff allowance.
- 33-1004A. Experience and education multiplier.
- 33-1004C. Base salary — Education and experience index.
- 33-1004D. Reporting — Idaho basic educational data system.
- 33-1004E. District's salary-based apportionment.
- 33-1004F. Obligations to retirement and social security benefits.
- 33-1004G. Early retirement incentive — Administrative staff excluded.
- 33-1004H. Employing retired teachers and administrators. [Effective until July 1, 2012.]

SECTION.

- 33-1005. Districts receiving federal funds.
- 33-1006. Transportation support program.
- 33-1006A. [Amended and redesignated.]
- 33-1007. Exceptional education program report.
- 33-1007A. Feasibility study and plan for school closures and/or school district consolidation.
- 33-1008. Support program — Elementary district reclassified.
- 33-1008A. [Repealed.]
- 33-1009. Payments from the public school income fund.
- 33-1009A. [Repealed.]
- 33-1010. Apportionments when mines net profits considered.
- 33-1011. Taxes to be levied by county commissioners — Determination and certification.
- 33-1012. Transmittal of county school moneys.
- 33-1013. County treasurer — County auditor — Duties.
- 33-1014. [Repealed.]
- 33-1015. State revenue matching under the national school lunch act.
- 33-1016. [Repealed.]
- 33-1017. School safety and health revolving loan and grant fund.
- 33-1018. Public school discretionary funding variability.
- 33-1018A. Other uses of public education stabilization fund.
- 33-1018B. School building maintenance matching funds.
- 33-1019. Allocation for school building maintenance required.
- 33-1020. Idaho digital learning academy funding.

33-1001. Definitions. — The following words and phrases used in this chapter are defined as follows:

(1) "Administrative schools" means and applies to all elementary schools and kindergartens within a district that are situated ten (10) miles or less from both the other elementary schools and the principal administrative office of the district and all secondary schools within a district that are situated fifteen (15) miles or less from other secondary schools of the district.

(2) "Average daily attendance" or "pupils in average daily attendance" means the aggregate number of days enrolled students are present, divided by the number of days of school in the reporting period; provided, however,

that students for whom no Idaho school district is a home district shall not be considered in such computation.

(3) "Elementary grades" or "elementary average daily attendance" means and applies to students enrolled in grades one (1) through six (6) inclusive, or any combination thereof.

(4) "Elementary schools" are schools that serve grades one (1) through six (6) inclusive, or any combination thereof.

(5) "Elementary/secondary schools" are schools that serve grades one (1) through twelve (12) inclusive, or any combination thereof.

(6) "Homebound student" means any student who would normally and regularly attend school, but is confined to home or hospital because of an illness or accident for a period of ten (10) or more consecutive days.

(7) "Kindergarten" or "kindergarten average daily attendance" means and applies to all students enrolled in a school year, less than school year, or summer kindergarten program.

(8) "Public school district" or "school district" or "district" means any public school district organized under the laws of this state, including specially chartered school districts.

(9) "Secondary grades" or "secondary average daily attendance" means and applies to students enrolled in grades seven (7) through twelve (12) inclusive, or any combination thereof.

(10) "Secondary schools" are schools that serve grades seven (7) through twelve (12) inclusive, or any combination thereof.

(11) "Separate elementary school" means an elementary school which measured from itself, traveling on an all-weather road, is situated more than ten (10) miles distance from both the nearest elementary school and elementary/secondary school serving like grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools.

(12) "Separate kindergarten" means a kindergarten which measured from itself, traveling on an all-weather road, is situated more than ten (10) miles distance from both the nearest kindergarten school within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools.

(13) "Separate secondary school" means any secondary school which is located more than fifteen (15) miles by an all-weather road from any other secondary school and elementary/secondary school serving like grades operated by the district.

(14) "Support program" means the educational support program as described in section 33-1002, Idaho Code, the transportation support program described in section 33-1006, Idaho Code, and the exceptional education support program as provided in section 33-1007, Idaho Code.

(15) "Support unit" means a function of average daily attendance used in the calculations to determine financial support provided the public school districts.

(16) "Teacher" means any person employed in a teaching, instructional, supervisory, educational administrative or educational and scientific capac-

ity in any school district. In case of doubt the state board of education shall determine whether any person employed requires certification as a teacher. [I.C., § 33-1001, as added by 1980, ch. 179, § 2, p. 382; am. 2000, ch. 266, § 1, p. 743; am. 2003, ch. 299, § 3, p. 814; am. 2006, ch. 244, § 5, p. 740.]

STATUTORY NOTES

Prior Laws. — Former § 33-1001, which comprised S.L. 1963, ch. 13, § 121, p. 27; am. 1963, ch. 322, § 1, p. 919; am. 1965, ch. 232, § 1, p. 553; am. 1972, ch. 352, § 1, p. 1040; am. 1974, ch. 127, § 5, p. 1305; am. 1975, ch. 42, § 5, p. 73; am. 1979, ch. 254, § 5, p. 661, was repealed by S.L. 1980, ch. 179, § 1.

Amendments. — The 2006 amendment, by ch. 244, deleted former subsection (7), which defined the term “Idaho student information management system (ISIMS),” and redesignated the remaining subsections accordingly.

JUDICIAL DECISIONS

Cited in: Gardner v. School Dist. No. 55, 108 Idaho 434, 700 P.2d 56 (1985).

33-1002. Educational support program. — The educational support program is calculated as follows:

(1) State Educational Support Funds. Add the state appropriation, including the moneys available in the public school income fund, together with all miscellaneous revenues to determine the total state funds.

(2) From the total state funds subtract the following amounts needed for state support of special programs provided by a school district:

(a) Pupil tuition-equivalency allowances as provided in section 33-1002B, Idaho Code;

(b) Transportation support program as provided in section 33-1006, Idaho Code;

(c) Feasibility studies allowance as provided in section 33-1007A, Idaho Code;

(d) The approved costs for border district allowance, provided in section 33-1403, Idaho Code, as determined by the state superintendent of public instruction;

(e) The approved costs for exceptional child approved contract allowance, provided in subsection 2. of section 33-2004, Idaho Code, as determined by the state superintendent of public instruction;

(f) Certain expectant and delivered mothers allowance as provided in section 33-2006, Idaho Code;

(g) Salary-based apportionment calculated as provided in sections 33-1004 through 33-1004F, Idaho Code;

(h) Unemployment insurance benefit payments according to the provisions of section 72-1349A, Idaho Code;

(i) For expenditure as provided by the public school technology program;

(j) For employee severance payments as provided in section 33-521, Idaho Code;

(k) For distributions to the Idaho digital learning academy as provided in section 33-1020, Idaho Code;

(l) For the support of provisions that provide a safe environment conducive to student learning and maintain classroom discipline, an allocation of \$300 per support unit; and

(m) Any additional amounts as required by statute to effect administrative adjustments or as specifically required by the provisions of any bill of appropriation;

to secure the total educational support distribution funds.

(3) Average Daily Attendance. The total state average daily attendance shall be the sum of the average daily attendance of all of the school districts of the state. The state board of education shall establish rules setting forth the procedure to determine average daily attendance and the time for, and method of, submission of such report. Average daily attendance calculation shall be carried out to the nearest hundredth. Computation of average daily attendance shall also be governed by the provisions of section 33-1003A, Idaho Code.

(4) Support Units. The total state support units shall be determined by using the tables set out hereafter called computation of kindergarten support units, computation of elementary support units, computation of secondary support units, computation of exceptional education support units, and computation of alternative school secondary support units. The sum of all of the total support units of all school districts of the state shall be the total state support units.

COMPUTATION OF KINDERGARTEN SUPPORT UNITS

| Average Daily Attendance | Attendance Divisor | Units Allowed |
|--------------------------|--------------------|-----------------------|
| 41 or more | 40 | 1 or more as computed |
| 31 — 40.99 ADA | — | 1 |
| 26 — 30.99 ADA | — | .85 |
| 21 — 25.99 ADA | — | .75 |
| 16 — 20.99 ADA | — | .6 |
| 8 — 15.99 ADA | — | .5 |
| 1 — 7.99 ADA | — | count as elementary |

COMPUTATION OF ELEMENTARY SUPPORT UNITS

| Average Daily Attendance | Attendance Divisor | Minimum Units Allowed |
|--------------------------|---|-----------------------|
| 300 or more ADA | | 15 |
| | 23 ... grades 4,5 & 6..... | |
| | 22 ... grades 1,2 & 3 1994-95 | |
| | 21 ... grades 1,2 & 3 1995-96 | |
| | 20 ... grades 1,2 & 3 1996-97 | |
| | and each year thereafter. | |
| 160 to 299.99 ADA ... | 20 | 8.4 |
| 110 to 159.99 ADA ... | 19 | 6.8 |
| 71.1 to 109.99 ADA ... | 16 | 4.7 |
| 51.7 to 71.0 ADA ... | 15 | 4.0 |
| 33.6 to 51.6 ADA ... | 13 | 2.8 |
| 16.6 to 33.5 ADA ... | 12 | 1.4 |
| 1.0 to 16.5 ADA ... | n/a | 1.0 |

COMPUTATION OF SECONDARY SUPPORT UNITS

| Average Daily Attendance | Attendance Divisor | Minimum Units Allowed |
|--------------------------|---------------------------|-----------------------|
| 750 or more | 18.5 | 47 |
| 400 — 749.99 ADA | 16 | 28 |
| 300 — 399.99 ADA | 14.5 | 22 |
| 200 — 299.99 ADA | 13.5 | 17 |
| 100 — 199.99 ADA | 12 | 9 |
| 99.99 or fewer | Units allowed as follows: | |
| Grades 7—12 | | 8 |
| Grades 9—12 | | 6 |
| Grades 7— 9 | | 1 per 14 ADA |
| Grades 7— 8 | | 1 per 16 ADA |

COMPUTATION OF EXCEPTIONAL EDUCATION SUPPORT UNITS

| Average Daily Attendance | Attendance Divisor | Minimum Units Allowed |
|--------------------------|--------------------|-----------------------|
| 14 or more | 14.5 | 1 or more as computed |
| 12 — 13.99 | — | 1 |
| 8 — 11.99 | — | .75 |
| 4 — 7.99 | — | .5 |
| 1 — 3.99 | — | .25 |

COMPUTATION OF ALTERNATIVE SCHOOL SECONDARY SUPPORT UNITS

| Pupils in Attendance | Attendance Divisor | Minimum Units Allowed |
|----------------------|--------------------|-----------------------|
| 12 or more | 12 | 1 or more as computed |

In applying these tables to any given separate attendance unit, no school district shall receive less total money than it would receive if it had a lesser average daily attendance in such separate attendance unit. In applying the kindergarten table to a kindergarten program of less days than a full school year, the support unit allowance shall be in ratio to the number of days of a full school year. The tables for exceptional education and alternative school secondary support units shall be applicable only for programs approved by the state department of education following rules established by the state board of education. Moneys generated from computation of support units for alternative schools shall be utilized for alternative school programs. School district administrative and facility costs may be included as part of the alternative school expenditures.

(5) State Distribution Factor per Support Unit. Divide educational support program distribution funds, after subtracting the amounts necessary to pay the obligations specified in subsection (2) of this section, by the total state support units to secure the state distribution factor per support unit.

(6) District Support Units. The number of support units for each school district in the state shall be determined as follows:

- (a)(i) Divide the actual average daily attendance, excluding students approved for inclusion in the exceptional child educational program, for

the administrative schools and each of the separate schools and attendance units by the appropriate divisor from the tables of support units in this section, then add the quotients to obtain the district's support units allowance for regular students, kindergarten through grade 12 including alternative school secondary students. Calculations in application of this subsection shall be carried out to the nearest tenth.

(ii) Divide the combined totals of the average daily attendance of all preschool, handicapped, kindergarten, elementary, secondary and juvenile detention center students approved for inclusion in the exceptional child program of the district by the appropriate divisor from the table for computation of exceptional education support units to obtain the number of support units allowed for the district's approved exceptional child program. Calculations for this subsection shall be carried out to the nearest tenth when more than one (1) unit is allowed.

(iii) The total number of support units of the district shall be the sum of the total support units for regular students, subsection (6)(a)(i) of this section, and the support units allowance for the approved exceptional child program, subsection (6)(a)(ii) of this section.

(b) Total District Allowance Educational Program. Multiply the district's total number of support units, carried out to the nearest tenth, by the state distribution factor per support unit and to this product add the approved amount of programs of the district provided in subsection (2) of this section to secure the district's total allowance for the educational support program.

(c) District Share. The district's share of state apportionment is the amount of the total district allowance, subsection (6)(b) of this section.

(d) Adjustment of District Share. The contract salary of every noncertificated teacher shall be subtracted from the district's share as calculated from the provisions of subsection (6)(c) of this section.

(7) Property Tax Computation Ratio. In order to receive state funds pursuant to this section a charter district shall utilize a school maintenance and operation property tax computation ratio for the purpose of calculating its maintenance and operation levy, that is no greater than that which it utilized in tax year 1994, less four-tenths of one percent (.4%). As used herein, the term "property tax computation ratio" shall mean a ratio determined by dividing the district's certified property tax maintenance and operation budget by the actual or adjusted market value for assessment purposes as such values existed on December 31, 1993. Such maintenance and operation levy shall be based on the property tax computation ratio multiplied by the actual or adjusted market value for assessment purposes as such values existed on December 31 of the prior calendar year. [I.C., § 33-1002, as added by 1995, ch. 306, § 4, p. 1057; am. 1995, ch. 306, § 5, p. 1057; am. 1996, ch. 146, § 1, p. 478; am. 1996, ch. 322, § 23, p. 1029; am. 1996, ch. 408, § 1, p. 1350; am. 1998, ch. 1, § 103, p. 3; am. 1999, ch. 329, § 30, p. 852; am. 2000, ch. 266, § 2, p. 743; am. 2003, ch. 299, § 4, p. 814; am. 2003, ch. 372, § 9, p. 986; am. 2005, ch. 257, § 8, p. 789; am. 2006, ch. 418, § 7, p. 1291; am. 2006 (1st E.S.), ch. 1, § 8; am. 2007, ch. 79, § 5, p. 209; am. 2007, ch. 353, § 11, p. 1045; am. 2008, ch. 27, § 8, p. 46.]

STATUTORY NOTES

Cross References. — Superintendent of public instruction, § 67-1501 et seq.

Prior Laws. — Former § 33-1002, which comprised I.C., § 33-1002, as added by 1980, ch. 179, § 3, p. 382; am. 1981, ch. 224, § 3, p. 443; am. 1982, ch. 23, § 1, p. 27; am. 1983, ch. 54, § 1, p. 127; am. 1983, ch. 85, § 4, p. 176; am. 1985, ch. 107, § 6, p. 191; am. 1986, ch. 45, § 1, p. 130; am. 1987, ch. 52, § 2, p. 85; am. 1987, ch. 66, § 1, p. 116; am. 1987, ch. 101, § 1, p. 200; am. 1989, ch. 155, § 19, p. 371; am. 1994, ch. 316, § 1, p. 1008; am. 1994, ch. 428, § 2, p. 1368; am. 1994, ch. 440, § 1, p. 1409, was repealed by S.L. 1995, ch. 306, §§ 1-3, effective July 1, 1994.

Another former § 33-1002, which comprised S.L. 1963, ch. 13, § 121A, as added by 1963, ch. 322, § 2, p. 919; am. 1963, ch. 323, § 1, p. 932; am. 1965, ch. 232, § 2, p. 553; am. 1967, ch. 376, § 1, p. 1103; am. 1970, ch. 252, § 1, p. 667; am. 1972, ch. 352, § 2, p. 1040; am. 1973, ch. 24, § 1, p. 45; am. 1973, ch. 296, § 2, p. 620; am. 1974, ch. 127, § 6, p. 1305; am. 1975, ch. 42, § 6, p. 73; am. 1978, ch. 102, § 1, p. 209; am. 1978, ch. 291, § 2, p. 713; am. 1979, ch. 254, § 6, p. 661, was repealed by S.L. 1980, ch. 179, § 1.

Amendments. — This section was amended by three 1996 acts — ch. 146, § 1, effective July 1, 1996, ch. 322, § 23, effective January 1, 1997, and ch. 408, § 1, effective July 1, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 146, § 1, substituted “alternative school secondary” for “alternative high school secondary” throughout the section.

The 1996 amendment, by ch. 322, § 23, in subdivision 2.i. substituted “postsecondary” for “post-secondary”; and in subdivision 3. substituted “section 63-315” for “section 63-222”.

The 1996 amendment, by ch. 408, § 1, in subdivision 2.i. substituted “postsecondary” for “post-secondary”; and in subdivision 6., added the last two sentences to the last paragraph.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 299, § 4, rewrote subsections (2)i. through (2) l.

The 2003 amendment, by ch. 372, § 9, in subsection (3) substituted “the amount appropriated pursuant to section 33-1002D, Idaho Code, plus three tenths (.3%)” for “four-tenths (.4%)” and substituted “2003-04” for “1994-95.”

The 2006 amendment, by ch. 418, in subsection 3., substituted “property taxes” for “ad valorem taxes” and added “less any maintenance and operations levy funds credited as a

reduction against state funds provided for students attending school in another state” at the end.

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “the total educational support distribution funds” for “the state educational support funds” at the end of subsection (2), deleted former subsections 3 and 4, which related to local districts’ contribution calculation and educational support program distribution funds, deleted the introductory paragraph and Paragraph a. of former Paragraph 8 [now (6)], which related to the district share of state funds for educational support programs and the district contribution calculation, added present Paragraph (7), and redesignated the existing paragraphs accordingly, changing several references within the section to reflect those redesignations.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 79, added subsection (2)(j) and made related redesignations.

The 2007 amendment, by ch. 353, added subsection (2)(k) and made related redesignations.

The 2008 amendment, by ch. 27, corrected duplicate subsection designations resultant from multiple 2007 amendments.

Legislative Intent. — Section 6 of S.L. 2007, ch. 353 provided “It is legislative intent that the Idaho Safe and Drug-Free School Program shall include the following:

“(1) Districts will develop a policy and plan which will provide a guide for their substance abuse problems.

“(2) Districts will have an advisory board to assist each district in making decisions relating to the programs.

“(3) The districts’ substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(4) Districts shall submit an annual evaluation of their programs to the State Department of Education as to the effectiveness of their programs.”

Compiler’s Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006.’”

Effective Dates. — Section 7 of S.L. 1995, ch. 306 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval and retroactively to July 1, 1994. Approved March 21, 1995.

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Ad Valorem Property Tax.

The state's system of public school financing, in which per pupil expenditures varied among the school districts as a result of variations in the districts' assessed valuations for purposes of an ad valorem property tax,

did not deny equal protection of the law to nor discriminate against students in less affluent school districts with low expenditures. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

33-1002A. Local district contribution reduction. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 33-1002A, which comprised S. L. 1970, ch. 88, § 1, p. 216, was repealed by S.L. 1972, ch. 352, § 3.

comprised I.C., § 33-1002A, as added by 1991, ch. 320, § 1, p. 832, was repealed by S.L. 2006 (1st E.S.), ch. 1, § 9, effective January 1, 2006.

Compiler's Notes. — This section, which

33-1002B. Pupil tuition-equivalency allowances. — 1. Districts which educate pupils placed by Idaho court order in licensed homes, agencies, institutions or juvenile detention facilities shall be eligible for an allowance equivalent to forty-two percent (42%) of the previous year's gross per pupil cost calculated on a daily basis. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

2. Districts which educate pupils placed by Idaho court order in a juvenile detention facility with a summer school program shall be eligible for an allowance equivalent to one-half (1/2) of forty-two percent (42%) of the previous year's gross per pupil cost calculated on a daily basis. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

3. Districts which educate school age special education students who, due to the nature and severity of their disabilities are residing in licensed public or private residential facilities or homes, and whose parents are not patrons of the district, shall be eligible for an allowance equivalent to forty-two percent (42%) of the previous year's gross per pupil cost per child plus the excess cost rate that is annually determined by the state superintendent of public instruction. This district allowance shall be in addition to exceptional education support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction. [I.C., § 33-1002B, as added by 1994, ch. 428, § 3, p. 1368; am. 1994, ch. 440, § 2, p. 1409; am. 1996, ch. 133, § 1, p. 456; am. 2001, ch. 93, § 2, p. 232; am. 2001, ch. 252, § 1, p. 917; am. 2008, ch. 401, § 1, p. 1104.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Amendments. — This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 93, § 2, in subsection 1. deleted “group” preceding “home”.

The 2001 amendment, by ch. 252, § 1, in subsection 1., added “calculated on a daily basis.” following “tuition rate per pupil”; added subsection 2.; and redesignated former subsection 2. as present subsection 3.

The 2008 amendment, by ch. 401, throughout the section, inserted “forty-two percent (42%) of”; in subsection 1., substituted “gross per pupil cost” for “certified local annual tuition rate per pupil”; in subsection 2., substituted “gross per pupil cost” for “local annual tuition rate per pupil”; and in subsection 3., substituted “gross per pupil cost per child” for “certified local annual tuition rate per child.”

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the

district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

33-1002C. Summer school program support units — Alternative secondary school — Juvenile detention facility. — (1) Alternative secondary summer school programs of not less than two hundred twenty-five (225) hours of instruction, which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code, may be established as approved by the state board of education. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the alternative school secondary support units calculated for the school district for the succeeding school term.

(2) Districts which educate pupils placed by court order in a juvenile detention facility may establish a summer school program which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the exceptional education school support units calculated for the school district for the succeeding school term.

(3) Average daily attendance and the support units so generated by this section shall not be included in or subject to the provisions of section 33-1003, Idaho Code, and shall be included as an addition to any other support units generated pursuant to Idaho Code. [I.C., § 33-1002C, as added by 1990, ch. 204, § 1, p. 457; am. 1992, ch. 42, § 1, p. 142; am. 1996, ch. 146, § 2, p. 478; am. 2001, ch. 252, § 2, p. 917; am. 2002, ch. 154, § 1, p. 449; am. 2005, ch. 255, § 5, p. 782.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1992, ch. 42 declared an emergency. Approved March 16, 1992.

Section 8 of S.L. 2005, ch. 255 declared an emergency. Approved April 5, 2004.

33-1002D. Property tax replacement. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-1002D, as added by 1995, ch. 26, § 2, p. 33; am. 1996, ch. 322, § 24, p. 1029; am. 1998, ch. 362, § 1, p. 1133; am. 2003, ch. 372, § 10, p. 986; am. 2003, ch. 373, § 1, p. 998; am. 2005, ch. 191, § 3, p. 591, was repealed by S.L. 2006 (1st E.S.), ch. 1, § 9, effective January 1, 2006.

Chapter 26, § 2, effective retroactive to

January 1, 1995, and ch. 108, § 1, effective July 1, 1995, each purported to create a new § 33-1002D. Chapter 26, § 2 was compiled as § 33-1002D and was later repealed by S.L. 2006 (1st E.S.), ch. 1, § 9. S.L. 1995, ch. 108, § 1 was compiled as § 33-1002F by the publisher and was permanently designated at that citation by S.L. 1996, ch. 146, § 3.

33-1002E. Pupils attending school in another state. — In any school district which abuts upon the border of another state, the resident pupils of said district may attend schools in the other state as provided in section 33-1403, Idaho Code. [1963, ch. 13, § 126, p. 27; am. 1963, ch. 322, § 4, p. 919; am. 1980, ch. 179, § 5, p. 382; amend. and redesisg. 1994, ch. 428, § 4, p. 1368; am. 2002, ch. 287, § 1, p. 833.]

STATUTORY NOTES

Prior Laws. — Former § 33-1002E, which comprised I.C., § 33-1002E, as added by 1989, ch. 125, § 1, p. 276, was repealed by S.L. 1994, ch. 428, § 1, effective July 1, 1994.

Compiler's Notes. — This section was formerly compiled as § 33-1004.

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except

that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

33-1002F. Alternative school report. — Annually, prior to the tenth legislative day, the department of education shall file with the legislature a report detailing the alternative secondary school programs within the state. On July 1 of each year, or as soon thereafter as feasible, each school district receiving moneys pursuant to the alternative school secondary support units factor in section 33-1002, Idaho Code, or section 33-1002C, Idaho Code, shall file with the state department a comprehensive report of the amount of money received in the district, the expenditure on alternative school programs, and the programs provided. This information shall be compiled by the department for transmission to the legislature. [I.C.,

§ 33-1002D, as added by 1995, ch. 108, § 1, p. 341; am. and redesign. 1996, ch. 146, § 3, p. 478.]

STATUTORY NOTES

Compiler's Notes. — S.L. 1995, ch. 26, § 2, effective retroactive to January 1, 1995, and S.L. 1995, ch. 108, § 1, effective July 1, 1995, each purported to create a new § 33-1002D. Chapter 26, § 2 was compiled as

§ 33-1002D and ch. 108, § 1 was compiled by the publisher as § 33-1002F. The recompilation was made permanent by S.L. 1996, ch. 146, § 3.

OPINIONS OF ATTORNEY GENERAL

A statute which cannot be implemented has no effect on the implementation of those statutes affected by S.L. 1995, ch. 26. OAG 95-3.

33-1002G. Professional-technical school added cost units. — School districts may establish professional-technical schools that qualify for funding appropriated for the specific purpose of supporting the added cost of professional-technical schools. These funds will be appropriated to the state board for professional-technical education, to be expended by the division of professional-technical education. The amount of the professional-technical school added cost unit would be calculated as an additional .33 secondary units based on full-time equivalent average daily attendance at an approved professional-technical school. In order for a school to qualify for funding as a professional-technical school, it must make application to the division of professional-technical education on or before the first Friday in July for the following fiscal year. For fiscal year 1999, applications must be made by May 1. All school programs must have a professional-technical component and meet at least four (4) of the five (5) following criteria:

(1) The school serves students from two (2) or more high school attendance zones with a minimum of fifteen percent (15%) of the total student body residing in attendance zones apart from the attendance zone of the majority of students.

(2) The school offers a majority of its class offerings as dual credit opportunities in conjunction with an accredited institution of higher education.

(3) All school programs involve at least one (1) supervised field experience.

(4) The school is administered and funded as a distinct school separate from schools that qualify for computation as regular secondary support units.

(5) The school is to be located at a separate site from regular high school facilities.

Hardship exemptions for the separate site requirement may be granted by the state board of education.

For funding purposes, students in attendance at a qualifying professional-technical school will be reported in full or half days. The state board of education will develop rules that will determine funding in instances where students attend a professional-technical school on a regular basis, but in

increments of time that total less than 2.5 hours per day. [I.C., § 33-1002G, as added by 1998, ch. 261, § 2, p. 863; am. 1999, ch. 329, § 2, p. 852.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1998, ch. 261 provided: “LEGISLATIVE INTENT. There is growing consensus that public schools need to better adapt to today’s workplace demands by providing curriculum and experiences that closely align themselves to the reality of the workplace. The emerging professional-technical skills center approach has been shown to accomplish this end. These schools are intended to serve students of all ability levels, including the gifted and talented. Courses are typically aligned with higher education and have a field experience component. Equipment is more attuned to

current industry standards and students from more than one high school access the centers. These centers always exceed the costs associated with a ‘regular’ high school and this factor has discouraged their widespread utilization. Idaho is no exception. This act provides a modest increase in per student funding over the regular secondary school units. It is the intent of the legislature in providing this increase to help cover the additional skill center costs of lower teacher-pupil ratios, transportation, equipment and field experience supervision.”

33-1003. Special applications of educational support program. —

(1) **Decrease in Average Daily Attendance.** — [For] Any school district which has a decrease in total average daily attendance of one percent (1%) of its average daily attendance in the then current school year from the total average daily attendance used for determining the allowance in the educational support program for the school year immediately preceding, the allowance of funds from the educational support program may be based on the average daily attendance of the school year immediately preceding, less one percent (1%). When this provision is applied, the decrease in average daily attendance shall be proportionately distributed among the various categories of support units that are appropriate for the district.

(2) **Application of Support Program to Separate Schools/Attendance Units in District.**

(a) **Separate Elementary School.** — Any separate elementary school shall be allowed to participate in the educational support program as though the school were the only elementary school operated by the district.

(b) **Hardship Elementary School.** — Upon application of the board of trustees of a school district, the state board of education is empowered to determine that a given elementary school or elementary schools within the school district, not otherwise qualifying, are entitled to be counted as a separate elementary school as defined in section 33-1001, Idaho Code, when, in the discretion of the state board of education, special conditions exist warranting the retention of the school as a separate attendance unit and the retention results in a substantial increase in cost per pupil in average daily attendance above the average cost per pupil in average daily attendance of the remainder of the district’s elementary grade school pupils. An elementary school operating as a previously approved hardship elementary school shall continue to be considered as a separate attendance unit, unless the hardship status of the elementary school is rescinded by the state board of education.

(c) **Separate Secondary School.** — Any separate secondary school shall be allowed to participate in the educational support program as though the school were the only secondary school operated by the district.

(d) **Elementary/Secondary School Attendance Units.** — Elementary grades in an elementary/secondary school will be funded as a separate attendance unit if all elementary grades served are situated more than ten (10) miles distance from both the nearest like elementary grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools. Secondary grades in an elementary/secondary school will be funded as a separate attendance unit if all secondary grades served are located more than fifteen (15) miles by an all-weather road from the nearest like secondary grades operated by the district.

(e) **Hardship Secondary School.** — Any district which operated two (2) secondary schools separated by less than fifteen (15) miles, but which district was created through consolidation subsequent to legislative action pursuant to chapter 111, laws of 1947, and which school buildings were constructed prior to 1935, shall be entitled to count the schools as separate attendance units.

(f) **Minimum Pupils Required.** — Any elementary school having less than ten (10) pupils in average daily attendance shall not be allowed to participate in the state or county support program unless the school has been approved for operation by the state board of education.

(3) **Remote Schools.** — The board of trustees of any Idaho school district which operates and maintains a school which is remote and isolated from the other schools of the state because of geographical or topographical conditions may petition the state board of education to recognize and approve the school as a remote and necessary school. The petition shall be in form and content approved by the state board of education and shall provide such information as the state board of education may require. Petitions for the recognition of a school as a remote and necessary school shall be filed annually at least ninety (90) days prior to the date of the annual meeting of the board of trustees as established in section 33-510, Idaho Code.

Within forty-five (45) days after the receipt of a petition for the recognition of a remote and necessary school, the state board of education shall either approve or disapprove the petition and notify the board of trustees of its decision. Schools which the state board of education approves as being necessary and remote shall be allowed adequate funding within the support program for an acceptable educational program for the students of the school. In the case of a remote and necessary secondary school, grades 7-12, the educational program shall be deemed acceptable when, in the opinion of the state board of education, the accreditation standard relating to staff size, established in accordance with section 33-119, Idaho Code, has been met. The final determination of an acceptable program and adequate funding in the case of a remote and necessary elementary school shall be made by the state board of education.

(4) **Support Program When District Boundaries are Changed.**

(a) In new districts formed by the division of a district, the support program computed for the district divided in its last year of operation,

shall be apportioned to the new districts created by the division, in the proportion that the average daily attendance of pupils, elementary and secondary combined, residing in the area of each new district so created, is to the average daily attendance of all pupils, elementary and secondary combined, in the district divided in its last year of operation before the division.

(b) When boundaries of districts are changed by excision or annexation of territory, the support program of any district from which territory is excised for the last year of operation before such excision shall be divided, and apportioned among the districts involved, as prescribed in subsection (4)(a) of this section.

(c) In new districts formed by consolidation of former districts after January 1, 2007, the support program allowance for a seven (7) year period following the formation of the new district, shall not be less than the combined support program allowances of the component districts in the last year of operation before consolidation. After the expiration of this period, the state department of education shall annually calculate the number of support units that would have been generated had the previous school districts not consolidated. All applicable state funding to the consolidated district shall then be provided based on a support unit number that is halfway between this figure and the actual support units, provided that it cannot be less than the actual support units. [1963, ch. 322, § 3, p. 919; am. 1965, ch. 232, § 3, p. 553; am. I.C., § 35-1003A, as added by 1973, ch. 86, § 1, p. 136; am. 1978, ch. 66, § 1, p. 133; am. I.C., § 33-1003B, as added by 1979, ch. 32, § 1, p. 47; am. 1979, ch. 254, § 7, p. 661; am. 1980, ch. 179, § 4, p. 382; am. 1980, ch. 180, § 1, p. 399; am. 1982, ch. 185, § 1, p. 488; am. 1983, ch. 53, § 1, p. 125; am. 1984, ch. 97, § 1, p. 223; am. 1985, ch. 236, § 1, p. 560; am. 1987, ch. 123, § 1, p. 251; am. 1989, ch. 296, § 3, p. 724; am. 1996, ch. 208, § 7, p. 658; am. 1996, ch. 322, § 25, p. 1029; am. 1997, ch. 117, § 5, p. 298; am. 2000, ch. 266, § 3, p. 743; am. 2006 (1st E.S.), ch. 1, § 10; am. 2007, ch. 79, § 6, p. 209.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, deleted former subsection (5), which related to the eligibility of a school district for an adjustment to its educational support program entitlement when its market value for assessment purposes decreased by 40% or more.

The 2007 amendment, by ch. 79, in subsection (4)(c), inserted “after January 1, 2007,” and added the last two sentences.

Compiler’s Notes. — Former § 33-1003A and former § 33-1003B were combined with former § 33-1003 by amendment of S.L. 1980, ch. 179, § 4.

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006.’”

The bracketed insertion at the beginning of

the section was made by the compiler to make the section more readable.

Effective Dates. — Section 2 of S.L. 1973, ch. 86 declared an emergency. Approved March 5, 1973.

Section 2 of S.L. 1982, ch. 185 declared an emergency. Approved March 24, 1982.

Section 2 of S.L. 1983, ch. 53 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, and retroactively for all purposes of the 1982-83 school year. Approved March 18, 1983.

Section 2 of S.L. 1987, ch. 123 declared an emergency. Approved March 27, 1987.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be effective July 1, 1996. Approved March 12, 1996.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

33-1003A. Calculation of average daily attendance. — In computing the average daily attendance the entire school year shall be used except that the twenty-eight (28) weeks having the highest average daily attendance, not necessarily consecutive, may be used. When a school is closed, or if a school remains open but attendance is significantly reduced because of storm, flood, failure of the heating plant, loss or damage to the school building, quarantine or order of any city, county or state health agency, or for reason believed by the board of trustees to be in the best interests of the health, safety or welfare of the pupils, the board of trustees having certified to the state department of education the cause and duration of such closure or impacted attendance, the average daily attendance for such day or days of closure or impacted attendance shall be considered as being the same as for the days when the school actually was in session or when attendance was not impacted. A decision by the state department to disallow such a consideration shall be subject to appeal to the state board of education.

For illness or accident that necessitates an absence from school for more than ten (10) consecutive school days, the school district may include homebound students in its total attendance, provided that academic instruction has been given by appropriate certified professional staff employed by the district. [I.C., § 33-1003A, as added by 1995, ch. 306, § 6, p. 1057.]

STATUTORY NOTES

Compiler's Notes. — Chapter 306, § 6, effective retroactive to July 1, 1994, and ch. 321, § 1, effective July 1, 1995, each purported to create a new § 33-1003A. Chapter 306, § 6 was compiled as § 33-1003A and ch. 321, § 1 was compiled as [33-1003B] 33-1003A. The redesignation of the section enacted by S.L. 1995, ch. 321 was made permanent by S.L. 2005, ch. 25 and S.L. 2005, ch. 257, but that section was also repealed by S.L. 2005, ch. 255, § 10, effective July 1, 2006.

A former § 33-1003A which comprised I.C., § 33-1003A, as added by 1973, ch. 86, § 1, p. 136, was amended and redesignated as part of § 33-1003 by S.L. 1980, ch. 179, § 4.

Effective Dates. — Section 7 of S.L. 1995, ch. 306 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval and retroactively to July 1, 1994. Approved March 21, 1995.

33-1003B. Special application — Minimum support. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-1003A, as added by 1995, ch. 321, § 1, p. 1085; am. and redesignig. 2005, ch. 25, § 48, p. 82; am. 2005, ch. 257, § 9, p. 789, was repealed by S.L. 2005, ch. 255, § 10, effective July 1, 2006.

A former § 33-1003B, which comprised I.C., § 33-1003B, as added by 1979, ch. 32, § 1, p. 47; am. 1979, ch. 254, § 7, p. 661, was amended and redesignated as part of § 33-1003 by S.L. 1980, ch. 179, § 4.

33-1003C. Special application — Technological instruction. — In order to acquire and maintain technology for individualized computer and/or distance learning programs, a school district may use students'

documented contact hours on individualized computer education or distance learning programs in determining the district's average daily attendance, whether the student is actually in the computer lab or distance learning center, or has logged on to the computer from another location. A district's technology instruction programs shall be subject to the following provisions:

(1) The certification requirements for an alternative school using the individualized computer education or distance learning program may be met by having a properly certificated teacher available on a consultant tutorial basis. The consultant tutors will be available by telephone, fax, e-mail, or in person at the school site on a daily basis.

(2) Districts claiming average daily attendance pursuant to this section shall submit annual evaluations of the program to the state board of education.

(3) Districts may offer individualized computer education or distance learning programs on a calendar which may differ from the rest of the district's instruction, but in no case may a district claim more average daily attendance for a student than the full-time equivalency of a regular term of attendance for a single student.

(4) Nonalternative high school students may receive individualized computer education or distance learning instruction and credit through an alternative school site. [I.C., § 33-1003C, as added by 1998, ch. 273, § 1, p. 903; am. 2000, ch. 366, § 1, p. 1215; am. 2001, ch. 255, § 1, p. 921.]

33-1004. Staff allowance. — For each school district, a staff allowance shall be determined as follows:

(1) Using the daily attendance reports that have been submitted for computing the February 15 apportionment of state funds as provided in section 33-1009, Idaho Code, determine the total support units for the district in the manner provided in section 33-1002(6)(a), Idaho Code;

(2) Determine the instructional staff allowance by multiplying the support units by 1.1. A district must demonstrate that it actually employs the number of certificated instructional staff allowed. If the district does not employ the number allowed, the staff allowance shall be reduced to the actual number employed;

(3) Determine the administrative staff allowance by multiplying the support units by .075;

(4) Determine the classified staff allowance by multiplying the support units by .375;

(5) Additional conditions governing staff allowance:

(a) In determining the number of staff in subsections (2), (3) and (4) of this section, a district may contract separately for services to be rendered by nondistrict employees and such employees may be counted in the staff allowance. A "nondistrict employee" means a person for whom the school district does not pay the employer's obligations for employee benefits. When a district contracts for the services of a nondistrict employee, only the salary portion of the contract shall be allowable for computations.

(b) If there are circumstances preventing eligible use of staff allowance to which a district is entitled as provided in subsections (2) and (3) of this

section, an appeal may be filed with the state department of education outlining the reasons and proposed alternative use of these funds, and a waiver may be granted.

(c) For any district with less than forty (40) support units:

(i) The instructional staff allowance shall be calculated applying the actual number of support units. If the actual instructional staff employed in the school year is greater than the instructional staff allowance, then the instructional staff allowance shall be increased by one-half (1/2) staff allowance; and

(ii) The administrative staff allowance shall be calculated applying the actual number of support units. If the actual administrative staff employed in the school year is greater than the administrative staff allowance, then the administrative staff allowance shall be increased by one-half (1/2) staff allowance.

(iii) Additionally, for any district with less than twenty (20) support units, the instructional staff allowance shall be calculated applying the actual number of support units. If the number of instructional staff employed in the school year is greater than the instructional staff allowance, the staff allowance shall be increased as provided in paragraphs (i) and (ii) of this subsection, and by an additional one-half (1/2) instructional staff allowance.

(d) For any school district with one (1) or more separate secondary schools serving grades nine (9) through twelve (12), the instructional staff allowance shall be increased by two (2) additional instructional staff allowances for each such separate secondary school.

(e) Only instructional, administrative and classified personnel compensated by the school district from the general maintenance and operation fund of the district shall be included in the calculation of staff allowance or in any other calculations based upon staff, including determination of the experience and education multiplier, the reporting requirements, or the district's salary-based apportionment calculation. No food service staff or transportation staff shall be included in the staff allowance.

(6) In the event that the staff allowance in any category is insufficient to meet accreditation standards, a district may appeal to the state board of education, demonstrating the insufficiency, and the state board may grant a waiver authorizing sufficient additional staff to be included within the staff allowance to meet accreditation standards. Such a waiver shall be limited to one (1) year, but may be renewed upon showing of continuing justification. [I.C., § 33-1004, as added by 1994, ch. 428, § 5, p. 1368; am. 1995, ch. 52, § 1, p. 119; am. 1995, ch. 271, § 1, p. 871; am. 1998, ch. 166, § 1, p. 561; am. 2003, ch. 375, § 5, p. 1002; am. 2006, ch. 412, § 1, p. 1249; am. 2006 (1st E.S.), ch. 1, § 11.]

STATUTORY NOTES

Amendments. — This section was amended by two 1995 acts — ch. 52, § 1, effective January 1, 1995, and ch. 271, § 1, effective July 1, 1995, which do not conflict and have been compiled together. The 1995 amendment, by ch. 52, § 1, in subdivision 1. added "Using the daily attendance reports that have been submitted for

computing the February 15th apportionment of state funds as provided in section 33-1009, Idaho Code" at the beginning of the subdivision; substituted "determine" for "Determine", and added "Idaho Code" at the end of the subdivision; added a new clause 5. a. and renumbered former clauses a., b., and c. as present clauses b., c. and d.

The 1995 amendment, by ch. 271, § 2, added subdivision 6.

The 2006 amendment, by ch. 412, redesignated the subsections; added present subsection (5)(d).

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted "section 33-1002 (6)(a)" for "section 33-1002 8.b." at the end of Subsection (1).

Compiler's Notes. — Former § 33-1004 was amended and redesignated as § 33-1002E by S.L. 1994, ch. 428, § 4.

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hun-

dred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

Section 2 of S.L. 1995, ch. 52, declared an emergency and provided that this act shall be in full force and effect on and after March 7, 1995, and retroactively to January 1, 1995. Approved March 7, 1995.

33-1004A. Experience and education multiplier. — Each instructional and administrative staff position shall be assigned an appropriate multiplier based upon the following table:

EXPERIENCE AND EDUCATION

| Years | BA | BA + 12 | BA + 24 | MA | MA + 12 | MA + 24 | MA + 36 |
|------------|---------|---------|---------|---------|---------|---------|---------|
| 0 | 1.00000 | 1.03750 | 1.07640 | BA + 36 | BA + 48 | BA + 60 | ES/DR |
| 1 | 1.03750 | 1.07640 | 1.11680 | 1.11680 | 1.15870 | 1.20220 | 1.24730 |
| 2 | 1.07640 | 1.11680 | 1.15870 | 1.15870 | 1.20220 | 1.24730 | 1.29410 |
| 3 | 1.11680 | 1.15870 | 1.20220 | 1.20220 | 1.24730 | 1.29410 | 1.34260 |
| 4 | 1.15870 | 1.20220 | 1.24730 | 1.24730 | 1.29410 | 1.34260 | 1.39290 |
| 5 | 1.20220 | 1.24730 | 1.29410 | 1.29410 | 1.34260 | 1.39290 | 1.44510 |
| 6 | 1.24730 | 1.29410 | 1.34260 | 1.34260 | 1.39290 | 1.44510 | 1.49930 |
| 7 | 1.29410 | 1.34260 | 1.39290 | 1.39290 | 1.44510 | 1.49930 | 1.55550 |
| 8 | 1.34260 | 1.39290 | 1.44510 | 1.44510 | 1.49930 | 1.55550 | 1.61380 |
| 9 | 1.39290 | 1.44510 | 1.49930 | 1.49930 | 1.55550 | 1.61380 | 1.67430 |
| 10 | 1.39290 | 1.49930 | 1.55550 | 1.55550 | 1.61380 | 1.67430 | 1.73710 |
| 11 | 1.39290 | 1.49930 | 1.55550 | 1.61380 | 1.67430 | 1.73710 | 1.80220 |
| 12 | 1.39290 | 1.49930 | 1.55550 | 1.61380 | 1.73710 | 1.80220 | 1.86980 |
| 13 or more | 1.39290 | 1.49930 | 1.55550 | 1.61380 | 1.73710 | 1.86980 | 1.93990 |
| | | | | | | | 2.01260 |

In determining the experience factor, the actual years of teaching or administrative service in a public school, in an accredited private or parochial school, or beginning in the 2005-06 school year and thereafter in an accredited college or university shall be credited.

In determining the education factor, only credits earned after initial certification, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by the state board of education or a regional accredi-

ing association, shall be allowed. Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree prepared instructional staff. Credits earned by such occupational specialist instructional staff after initial certification shall be credited toward the education factor.

In determining the statewide average multiplier for instructional staff, no multiplier in excess of 1.59092 shall be used. If the actual statewide average multiplier for instructional staff, as determined by this section, exceeds 1.59092, then each school district's instructional staff multiplier shall be multiplied by the result of 1.59092 divided by the actual statewide average multiplier for instructional staff.

In determining the statewide average multiplier for administrative staff, no multiplier in excess of 1.86643 shall be used. If the actual statewide average multiplier for administrative staff, as determined by this section, exceeds 1.86643, then each school district's administrative staff multiplier shall be multiplied by the result of 1.86643 divided by the actual statewide average multiplier for administrative staff. [I.C., § 33-1004A, as added by 1994, ch. 428, § 6, p. 1368; am. 2000, ch. 67, § 1, p. 151; am. 2003, ch. 371, § 4, p. 983; am. 2003, ch. 375, § 4, p. 1002; am. 2004, ch. 341, § 4, p. 1015; am. 2006, ch. 260, § 1, p. 799; am. 2008, ch. 158, § 1, p. 455.]

STATUTORY NOTES

Amendments. — This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 371, § 4, added the paragraph relating to the statewide average multiplier for instructional staff.

The 2003 amendment, by ch. 375, § 4, added the paragraph relating to the statewide average multiplier for administrative staff.

The 2006 amendment, by ch. 260, inserted "or beginning in the 2005-06 school year and thereafter in an accredited college or university" following "parochial school" in the second paragraph.

The 2008 amendment, by ch. 158, in the first paragraph following the table, deleted "an accredited" preceding "public school."

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less

the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

Section 2 of S.L. 2008, ch. 158 declared an emergency retroactively to July 1, 2007 and approved March 17, 2008.

33-1004C. Base salary — Education and experience index. — The base salary shall be reviewed annually by the legislature.

The statewide education and experience index (or state average index, or state index) is the average of all qualifying employees, instructional and administrative respectively. It is determined by totaling the index value for all qualifying employees and dividing by the number of employees. [I.C., § 33-1004C, as added by 1994, ch. 428, § 7, p. 1368.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the

educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

33-1004D. Reporting — Idaho basic educational data system. — For each employee of the school district, a report shall be made in a format prescribed by the state superintendent of public instruction, which shall include sufficient identifying information to provide individual verification, education, teaching experience, and other district employment information. The form shall be filed with the state department of education not later than October 15 of each school year. [I.C., § 33-1004D, as added by 1994, ch. 428, § 8, p. 1368.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the

educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

33-1004E. District's salary-based apportionment. — Each district shall be entitled to a salary-based apportionment calculated as provided in this section.

1. To determine the apportionment for instructional staff, first determine the district average experience and education index by placing all eligible district certificated instructional employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus .03 for the 1994-95 school year, and shall receive their actual index but not more than the state average plus .06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district instructional staff index shall be

multiplied by the instructional base salary of \$25,231. The amount so determined shall be multiplied by the district staff allowance for instructional staff determined as provided in section 33-1004(2), Idaho Code. The instructional salary allocation shall be further increased by the amount necessary for each full-time equivalent instructional staff member placed on the experience and education index to be allocated at least the minimum salary mandated by this section. Full-time instructional staff salaries shall be determined from a salary schedule developed by each district and submitted to the state department of education. No full-time instructional staff member shall be paid less than \$31,750. If an instructional staff member has been certified by the national board for professional teaching standards, the staff member shall be designated as a master teacher and receive \$2,000 per year for five (5) years. The instructional salary shall be increased by \$2,000 for each master teacher. The resulting amount is the district's salary-based apportionment for instructional staff. For purposes of this section, teachers qualifying for the salary increase as master teacher shall be those who have been recognized as national board certified teachers as of July 1 of each year.

2. To determine the apportionment for district administrative staff, first determine the district average experience and education index by placing all eligible certificated administrative employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus .03 for the school year 1994-95, and shall receive their actual index but not more than the state average index plus .06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district administrative staff index shall be multiplied by the base salary of \$36,532. The amount so determined shall be multiplied by the district staff allowance for administrative staff determined as provided in section 33-1004(3), Idaho Code. The resulting amount is the district's salary-based apportionment for administrative staff.

3. To determine the apportionment for classified staff, multiply \$20,376 by the district classified staff allowance determined as provided in section 33-1004(4), Idaho Code. The amount so determined is the district's apportionment for classified staff.

4. The district's salary-based apportionment shall be the sum of the apportionments calculated in subsections 1., 2. and 3., of this section, plus the benefit apportionment as provided in section 33-1004F, Idaho Code. [I.C., § 33-1004E, as added by 1994, ch. 428, § 9, p. 1368; am. 1996, ch. 77, § 11, p. 242; am. 1998, ch. 363, § 5, p. 1138; am. 1999, ch. 350, § 1, p. 936; am. 1999, ch. 386, § 5, p. 1075; am. 2001, ch. 359, § 5, p. 1263; am. 2001, ch. 389, § 1, p. 1368; am. 2004, ch. 341, § 5, p. 1015; am. 2004, ch. 342, § 9, p. 1019; am. 2006, ch. 417, § 7, p. 1288; am. 2006, ch. 418, § 8, p. 1291; am. 2006, ch. 420, § 5, p. 1300; am. 2007, ch. 90, § 15, p. 246; am. 2007, ch. 350, § 5, p. 1028; am. 2007, ch. 351, § 8, p. 1035; am. 2007, ch. 352, § 9, p. 1039; am. 2008, ch. 362, § 5, p. 991; am. 2008, ch. 363, § 8, p. 994; am. 2008, ch. 391, § 8, p. 1075.]

STATUTORY NOTES

Amendments. — This section was amended by two 1999 acts — ch. 350, § 1 and ch. 396, § 5, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 350, § 1, in subsection 1., added the sixth, seventh and last sentences and substituted “salary-based” for “salary based” in the eighth sentence.

The 1999 amendment, by ch. 386, § 5, in subsection 1., in the fourth sentence, substituted “\$20,915” for “\$20,306” and in the eighth sentence, substituted “salary-based” for “salary based”; in subsection 2., in the fourth sentence, substituted “\$30,599” for “\$29,708” and in subsection 3., substituted “\$16,232” for “\$15,759”.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 359, § 5, in subsection 1., substituted “\$23,210” for “\$20,915”; in subsection 2., substituted “\$33,760” for “\$30,599”; and in subsection 3., substituted “\$18,463” for “\$16,232”.

The 2001 amendment, by ch. 389, § 1, made the exact changes as in ch. 359, § 1; and in subsection 1., added the fourth sentence;

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 341 substituted “the amount necessary for each full-time equivalent instructional staff member placed on the experience and education index to be allocated at least the minimum salary mandated by this section” for “\$1,000 for each teacher placed on step one, column one, of the experience and education index” in the fourth sentence of subsection 1, and “\$27,500” for “the state instructional base salary plus \$1,000, or \$25,000, whichever is greater” in the sixth sentence of that subsection.

The 2004 amendment, by ch. 342 substituted “\$18,648” for “\$18,463” in the first sentence of subsection 3.

This section was amended by three 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 417, substituted “\$23,906” for “\$23,210” and “\$30,000” for “\$27,500” in subsection 1.

The 2006 amendment, by ch. 418, substituted “\$19,207” for “\$18,648” in subsection 3.

The 2006 amendment, by ch. 420, substituted “\$34,773” for “\$33,760” in subsection 2.

This section was amended by four 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 90, throughout the section, inserted parentheses to indi-

cate subsection designations following “33-1004.”

The 2007 amendment, by ch. 350, substituted “\$35,816” for “\$34,773” in subsection 2.

The 2007 amendment, by ch. 351, in subsection 1., substituted “\$24,623” for “\$23,906” and “\$31,000” for “\$30,000.”

The 2007 amendment, by ch. 352, substituted “\$19,783” for “\$19,207” in subsection 3.

This section was amended by three 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 362, substituted “\$36,532” for “\$35,816” in the fourth sentence in subsection 2.

The 2008 amendment, by ch. 363, in subsection 1., in the fourth sentence, substituted “\$25,231” for “\$24,623,” in the sixth sentence, inserted “further,” and in the eighth sentence, substituted “\$31,750” for “\$31,000.”

The 2008 amendment, by ch. 390, substituted “\$20,376” for “\$19,783” in subsection (3).

Legislative Intent. — Section 4 of S.L. 2007, ch. 350 provided “It is the legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or public charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

Section 4 of S.L. 2008, ch. 362 provided “It is legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or public charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program

allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insuffi-

cient, shall negate the provisions of this act."

Section 16 of S.L. 1996 declared an emergency and provided that § 15 would be in full force and effect on and after passage and approval. Approved March 6, 1996.

Section 24 of S.L. 2001, ch. 359 declared an emergency. Approved April 9, 2001.

33-1004F. Obligations to retirement and social security benefits.

— 1. Based upon the actual salary-based apportionment, as determined in section 33-1004E, Idaho Code, there shall be allocated that amount required to meet the employer's obligations to the public employee retirement system and to social security.

2. If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to two-thirds (2/3) of the additional obligation for the school year 1994-95. If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to one-third (1/3) of the additional obligation for the school year 1995-96. Thereafter, the benefit allocation shall be based solely upon the provisions of subsection 1. of this section. [I.C., § 33-1004F, as added by 1994, ch. 428, § 10, p. 1368.]

STATUTORY NOTES

Cross References. — Public employee retirement system, § 59-1301 et seq.

Legislative Intent. — Section 4 of S.L. 2006, ch. 420 provides: "It is legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or public charter school actually employs with its salary based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff."

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections

33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

33-1004G. Early retirement incentive — Administrative staff excluded. — (1) Except as provided in subsection (8) of this section, each certificated employee of an Idaho public school district as defined in section 33-1001(16), Idaho Code, is eligible for an early retirement incentive, provided they meet the following criteria:

(a) The employee has completed a minimum of ten (10) years of continuous full-time certified employment, which may include time spent on a sabbatical leave, in Idaho public school districts at the time of application.

(b) The employee is not eligible for unreduced service, early or disability retirement from the public employee retirement system of Idaho at the time of application.

(c) The employee is fifty-five (55) years old before September 1 of the year the application is made; provided that persons turning fifty-six (56) years old or greater between August 15 and 31, 2000, will be eligible to receive the retirement incentive option percentage provided in this section that reflects their age on August 15, 2000.

(d) The employee submits his/her application to the state superintendent of public instruction on or before April 1 of the year of application.

(e) The employee is contracted with an Idaho public school district for the entire school year during the year of application and has not been terminated or on a leave of absence for the current or upcoming school year.

(2)(a) Full-time qualifying applicants shall receive as a one (1) time incentive the following amount of the employee's qualifying salary allocation as provided in section 33-1004E, Idaho Code:

| | |
|-----------------------------|-------------------|
| at 55 years of age | 55% of allocation |
| at 56 years of age | 50% of allocation |
| at 57 years of age | 45% of allocation |
| at 58 years of age | 40% of allocation |
| at 59 years of age | 30% of allocation |
| at 60 years of age | 30% of allocation |
| at 61 years of age | 20% of allocation |
| at 62 years of age | 20% of allocation |
| at 63 years of age and over | 0% of allocation |

(b) Certified employees working less than full-time in the application year will have the incentive payment prorated according to their full-time equivalent (FTE) percentage.

(c) Incentive payments for certified employees not placed on the experience and education multiplier table as provided in section 33-1004A, Idaho Code, will be calculated using the BA column of the table.

(3) Incentives and the employer's share of FICA benefits shall be paid by the state department of education to the Idaho public school district with which the applicant was last contracted on or before July 31 of the year of application and acceptance.

(4) Incentives shall be considered additional compensation flowing from the employment relationship and subject to federal and state tax laws. Incentives shall not be considered salary for purposes of the public employee retirement system.

(5) Any employee receiving an early retirement incentive as provided in this section shall not be eligible for future employment with an Idaho school district where such employment would again qualify him/her for participation in the state retirement system.

(6) Any applicant choosing to withdraw their application must notify the state superintendent of public instruction in writing no later than June 20 in the year of application.

(7) A special application of the early retirement incentive shall supersede the limitations of this section to the extent necessary to comply with this

subsection. An otherwise qualified certificated employee who becomes medically unable to work prior to July 1 of any year shall be eligible to apply for the early retirement incentive for which the employee would have been eligible retroactive to April 1.

(8) Administrative staff shall not be allowed to participate in the early retirement incentive program as provided in this section and such staff are hereby excluded from participation in the program. [I.C., § 33-1004G, as added by 1996, ch. 143, § 1, p. 472; am. 1997, ch. 145, § 1, p. 420; am. 1999, ch. 335, § 1, p. 911; am. 2000, ch. 167, § 1, p. 418; am. 2000, ch. 266, § 5, p. 743; am. 2003, ch. 299, § 6, p. 814; am. 2003, ch. 375, § 6, p. 1002; am. 2006, ch. 244, § 6, p. 740.]

STATUTORY NOTES

Cross References. — Public employee retirement system, § 59-1301.

State superintendent of public instruction, § 67-1501 et seq.

Amendments. — This section was amended by two 2000 acts — ch. 167, § 1 and ch. 266, § 5, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 167, § 1, inserted “which may include time spent on a sabbatical leave” in subdivision (1)(a); in subdivision (1)(c) substituted “September 1” for “August 15” and added “provided that persons turning fifty-six (56) years old or greater between August 15 and 31, 2000, will be eligible to receive the retirement incentive option percentage provided in this section that reflects their age on August 15, 2000”; and in subsection (7) substituted “supersede” for “supercede”.

The 2000 amendment, by ch. 266, § 5, substituted “supersede” for “supercede” in subsection (7).

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 299, § 6, effective July 1, 2003, in subsection (1) substituted “section 33-1001 17.” for “section 33-1001 16.”

The 2003 amendment, by ch. 375, § 6, effective September 1, 2003, inserted the exception at the beginning of subsection (1) and added subsection (8).

The 2006 amendment, by ch. 244, updated the section reference in subsection (1).

Effective Dates. — Section 2 of S.L. 1996, ch. 347 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.” Became law without the governor’s signature, March 27, 1996.

Section 2 of S.L. 1999, ch. 335 declared an emergency retroactively to January 1, 1998. Approved March 24, 1999.

33-1004H. Employing retired teachers and administrators. [Effective until July 1, 2012.] — (1) Notwithstanding the provisions of section 33-514, 33-1271 or 33-1273, Idaho Code, school districts may employ certificated school teachers and administrators who are receiving retirement benefits from the public employee retirement system of Idaho, except those who received benefits under the early retirement program provided in section 33-1004G, Idaho Code, in positions requiring such certification, as at-will employees. Any employment contract between the retiree and the school district shall be separate and apart from the collective bargaining agreement of the school district.

(2) Retirees employed under this section shall accrue one (1) day per month of sick leave, with no annual sick leave accumulation unless additional sick leave is negotiated between the candidate and the school district at the time of employment. No sick leave accrued under this section qualifies for unused sick leave benefits under section 33-1228, Idaho Code.

(3) School districts are not required to provide health insurance or life insurance benefits to persons employed under this section. Post-termination benefits may be negotiated between the school district and the certificated employee at the time of rehiring but in no event can the parties affect or attempt to affect the provisions governing the public employee retirement system. [I.C., § 33-1004H, as added by 2007, ch. 131, § 1, p. 387.]

STATUTORY NOTES

Cross References. — Public employee retirement system, § 59-1301 et seq.

ch. 131 provided "The provisions of Section (1) of this act shall be null, void and of no force and effect on and after July 1, 2012."

Effective Dates. — Section 3 of S.L. 2007,

33-1005. Districts receiving federal funds. — In school districts which receive moneys for the maintenance and operation of the schools from agencies of the federal government, the educational support program shall be computed on the basis of the average daily attendance of pupils as set forth in this chapter and without regard to the manner in which such allowance from the federal government may be computed. [1963, ch. 13, § 127, p. 27; am. 1963, ch. 322, § 5, p. 919; am. 1980, ch. 179, § 6, p. 382.]

33-1006. Transportation support program. — (1) The state board of education shall determine what costs of transporting pupils, including maintenance, operation and depreciation of basic vehicles, insurance, payments under contract with other public transportation providers whose vehicles used to transport pupils comply with federal transit administration regulations, "bus testing," 49 C.F.R. part 665, and any revision thereto, as provided in subsection (4)(d) of this section, or other state department of education approved private transportation providers, salaries of drivers, and any other costs, shall be allowable in computing the transportation support program of school districts.

(2) Any costs associated with the addition of vehicle features that are not part of the basic vehicle shall not be allowable in computing the transportation support program of school districts. A basic vehicle is hereby defined as the cost of the vehicle without optional features, plus the addition of essential safety features and features necessary for the transportation of pupils with disabilities.

(3) Each school district shall maintain records and make reports as are required for the purposes of this section.

(4) The transportation support program of a school district shall be based upon the allowable costs of:

(a) Transporting public school pupils one and one-half (1 1/2) miles or more to school;

(b) Transporting pupils less than one and one-half (1 1/2) miles as provided in section 33-1501, Idaho Code, when approved by the state board of education;

(c) The costs of payments when transportation is not furnished, as provided in section 33-1503, Idaho Code;

(d) The transportation program for grades six (6) through twelve (12), upon the costs of payments pursuant to a contract with other public or

private transportation providers entered into as provided in section 33-1510, Idaho Code, if the school district establishes that the reimbursable costs of transportation under the contract are equal to or less than the costs for school buses;

(e) The costs of providing transportation to and from approved school activities as may be approved by rules of the state board of education;

(f) The employer's share of contributions to the public employee retirement system and to social security.

(5) The state's share of the transportation support program shall be eighty-five percent (85%) of reimbursable transportation costs of the district incurred during the immediately preceding state fiscal year, provided the reimbursable costs do not exceed one hundred three percent (103%) of the statewide average reimbursable cost per mile or the state average reimbursable cost per student rider, whichever is more advantageous to the school district. If a school district's costs exceed the one hundred three percent (103%) limit when computed by the more advantageous of the two (2) methods, that school district shall be reimbursed at eighty-five percent (85%) of the maximum limit for whichever method is more favorable to the school district. A school district may appeal the application of the one hundred three percent (103%) limit on reimbursable costs to the state board of education, which may establish for that district a new percentile limit for reimbursable costs compared to the statewide average, which is higher than one hundred three percent (103%). In doing so, the state board of education may set a new limit that is greater than one hundred three percent (103%), but is less than the percentile limit requested by the school district. However, the percentage increase in the one hundred three percent (103%) cap shall not exceed the percentage of the district's bus runs that qualify as a hardship bus run, pursuant to this subsection. Any costs above the new level established by the state board of education shall not be reimbursed. Such a change shall only be granted by the state board of education for hardship bus runs. To qualify as a hardship bus run, such bus run shall display uniquely difficult geographic circumstances and meet at least two (2) of the following criteria:

(a) The number of student riders per mile is less than fifty percent (50%) of the statewide average number of student riders per mile;

(b) Less than a majority of the miles on the bus run are by paved surface, concrete or asphalt, road;

(c) Over ten percent (10%) of the miles driven on the bus run are a five percent (5%) slope or greater.

The legislative audits section of the legislative services office shall review cap increases granted by the state board of education pursuant to this section, and shall include findings in the board's regular audit report for any instances in which such increases failed to meet the standards set forth in this subsection.

(6) School districts that are unable to absorb the impact of the limitation on reimbursable expenses, through either efficiencies or the utilization of fund balances, may apply to the state board of education to receive a loan of moneys, not to exceed the amount of state funds lost through the application

of the limitation on reimbursable expenses, from the public education stabilization fund. Any school district receiving such a loan shall cause its reimbursement of state transportation moneys to be reduced by a like amount in the subsequent fiscal year, and the moneys so reduced shall be deposited in the public education stabilization fund.

(7) Beginning on July 1, 2005, any eligible home-based public virtual school may claim transportation reimbursement for the prior fiscal year's cost of providing educational services to students. In order to be eligible, such a school shall have at least one (1) average daily attendance divisor, pursuant to section 33-1002, Idaho Code, that is greater than the median divisor shown for any category of pupils, among the actual divisors listed. For the purposes of paragraphs (a), (b) and (c) of this subsection (7), "education provider" means the home-based public virtual school or an entity that has legally contracted with the home-based public virtual school to supply education services. Reimbursable costs shall be limited to the costs of:

- (a) Providing an internet connection service between the student and the education provider, not including the cost of telephone service;
- (b) Providing electronic and computer equipment used by the student to transmit educational material between the student and the education provider;
- (c) Providing a toll-free telephone service for students to communicate with the education provider;
- (d) Providing education-related, face-to-face visits by representatives of the home-based public virtual school, with such reimbursements limited to the mileage costs set for state employee travel by the state board of examiners; and
- (e) Any actual pupil transportation costs that would be reimbursable if claimed by a school district.

The total reimbursement for such home-based public virtual schools shall be exempt from the statewide average cost per mile limitations of this section. The state's share of reimbursable costs shall be eighty-five percent (85%), subject to the statewide cost per student rider provisions of this section. For the purposes of such home-based public virtual school, the number of student riders shall be the same as the number of pupils in average daily attendance. [1963, ch. 13, § 130, p. 27; am. 1969, ch. 198, § 1, p. 582; am. 1974, ch. 207, § 1, p. 1536; am. 1979, ch. 254, § 8, p. 661; am. 1980, ch. 179, § 7, p. 382; am. 1994, ch. 428, § 11, p. 1368; am. 1997, ch. 281, § 1, p. 852; am. 2003, ch. 372, § 11, p. 986; am. 2004, ch. 370, § 1, p. 1094; am. 2007, ch. 352, § 10, p. 1039.]

STATUTORY NOTES

Cross References. — Charge for audits by legislative services office, § 67-450A.

Public education stabilization fund, § 33-907.

Public employee retirement system, § 59-1301 et seq.

Amendments. — The 2007 amendment,

by ch. 352, in the introductory paragraph in subsection (5), added the fifth and last sentences, rewrote the seventh sentence, which formerly read: "Such a change shall only be granted by the state board of education if the application can be justified based on uniquely difficult geographic circumstances, or extraor-

dinary one (1) time circumstances outside the district's foresight and control," and deleted the former eighth and ninth sentences, which read: "An application granted based on extraordinary one (1) time circumstances shall be effective for one (1) year only. An application based on uniquely difficult geographic circumstances shall be reviewed by the state board of education for continued validity at least every five (5) years"; and added subsections (5)(a) through (5)(c).

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force

and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

Section 4 of S.L. 2004, ch. 370 declared an emergency. Approved April 1, 2004.

33-1006A. [Amended and redesignated.]

STATUTORY NOTES

Compiler's Notes. — This section was amended and redesignated as § 33-1007 by amendment of S.L. 1980, ch. 179, § 8.

33-1007. Exceptional education program report. — The state department of education shall report annually to the legislature the status of the exceptional education support program. The report shall include, but not be limited to, data concerning the number of persons served, both handicapped and gifted, the districts which operate programs and the nature of the program, the money distributed pursuant to the provisions of the exceptional education support program, and estimated number of persons, both handicapped and gifted, requiring but not receiving services. The report shall be filed not later than the fifteenth day of the legislative session and may include recommendations of the board relating to administrations of the program. [I.C., § 33-1006A, as added by 1974, ch. 127, § 7, p. 1305; am. and redesign. 1980, ch. 179, § 8, p. 382; am. 1985, ch. 107, § 7, p. 191; am. 1994, ch. 428, § 12, p. 1368.]

STATUTORY NOTES

Prior Laws. — Former § 33-1007, which comprised S.L. 1963, ch. 13, § 131, p. 27, was repealed by S.L. 1980, ch. 179, § 1.

Compiler's Notes. — This section was formerly compiled as § 33-1006A.

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code.

The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based

upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual ap-

propriation, that the appropriation is insufficient, shall negate the provisions of this act."

33-1007A. Feasibility study and plan for school closures and/or school district consolidation. — (1) The state superintendent of public instruction shall determine the reimbursable costs to any school district which are incurred under the provisions of section 33-310B, Idaho Code. The school district shall be entitled to reimbursement of all allowable costs pursuant to rules and regulations promulgated by the state board of education.

(2) In school districts where the implementation of a school closure plan requires the consolidation of one or more schools, the support program allowance for the consolidated school for a seven (7) year period following school consolidation, shall not be less than the combined support program allowance of the component schools in the last year of operation. [I.C., § 33-1007A, as added by 1989, ch. 296, § 4, p. 724.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Prior Laws. — Former § 33-1007A, which comprised I.C., § 1007A, as added by 1965, ch. 231, § 1, p. 551, was repealed by S.L. 1967, ch. 98, § 1, p. 208.

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except

that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

33-1008. Support program — Elementary district reclassified. — Should any elementary school district which has met the qualifications required by law for reclassification as a secondary school district propose to be so reclassified and begin the establishment and maintenance of a secondary school, that district shall be allowed a support program for the secondary school during the first year of its operation, computed as follows:

1. The educational support program shall be reported in the annual report preceding the beginning of operation of the secondary school, as the aggregate of the products of the number of resident pupils of the district who attended secondary schools of other districts during the preceding year, multiplied by the per-pupil state and county apportionments for the educational support program to the other districts as shown on the last approved tuition certificate of the other districts, for secondary school pupils.

2. The transportation support program shall be reported in the annual report preceding the beginning of operation of the secondary school, as the

aggregate of the products of the number of pupils proposed to be transported to the new secondary school who attended secondary schools in other districts during the preceding year, multiplied by the per-pupil state and county apportionments for the transportation support program to each of the other districts for secondary school pupils as shown on the last approved tuition certificate issued to the other district. [1963, ch. 13, § 132, p. 27; am. 1980, ch. 179, § 9, p. 382.]

**33-1008A. Apportionments for increased average daily attendance.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1970, ch. 180, § 1, p. 527; am. 1971, ch. 280, § 1, p. 1094, was repealed by S. L. 1972, ch. 352, § 4.

33-1009. Payments from the public school income fund. —

1. a. Payments of the state general account appropriation for public school support shall be made each year by the state board of education to the public school districts of the state in five (5) payments. Payments to the districts shall be made not later than the fifteenth day of August, the first day of October, the fifteenth day of November, the fifteenth day of February, and the fifteenth day of May each year. The first two payments by the state board of education shall be approximately thirty percent (30%) of the total general account appropriation for the fiscal year, while the third, fourth and fifth payments shall be approximately twenty percent (20%), ten percent (10%) and ten percent (10%), respectively. Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to this limitation.

b. Payments of moneys, other than the state general account appropriation, that accrue to the public school income fund shall be made by the state board of education to the school districts of the state on the fifteenth day of November, February, May and July each year. The total amount of such payments shall be determined by the state department of education and shall not exceed the amount of moneys available and on deposit in the public school income fund at the time such payment is made.

c. Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to the limitation imposed by paragraphs a. and b.

2. Payments made to the school districts in August, October and November are advance payments for the current year and will be based upon payments from the public school income fund for the preceding school year. Each school district shall receive its proportionate share of the advance payments in the same ratio that its total payment for the preceding year was to the total payments to all school districts for the preceding year.

3. No later than the fifteenth day of February in each year, the state department of education shall compute the state distribution factor based

on the total average daily attendance through the first Friday in November. The factor will be used in payments of state funds in February and May. Attendance shall be reported in a format and at a time specified by the state department of education.

As of the thirtieth day of June of each year the state department of education shall determine final payments to be made on July fifteenth next succeeding to the several school districts from the public school income fund for the school year ended June 30. The July payments shall take into consideration:

- a. the average daily attendance of the several school districts for the twenty-eight (28) best weeks of the school year completed not later than the thirtieth of June,
- b. all funds available in the public school income fund for the fiscal year ending on the thirtieth of June,
- c. all payments distributed for the current fiscal year to the several school districts,
- d. the adjustment based on the actual amount of discretionary funds per support unit required by the provisions of section 33-1018, Idaho Code,
- e. payments made or due for the transportation support program and the exceptional education support program. The state department of education shall apportion and direct the payment to the several school districts the moneys in the public school income fund in each year, taking into account the advance made under subsection 2. of this section, in such amounts as will provide in full for each district its support program, and not more than therefor required, and no school district shall receive less than fifty dollars (\$50.00).

4. If the full amount appropriated to the public school income fund from the general account by the legislature is not transferred to the public school income fund by the end of the fiscal year, the deficiency resulting therefrom shall either be restored or reduced through a special transfer from the general account in the first sixty (60) days of the following fiscal year, or shall be calculated in computing district levies, and any additional levy shall be certified by the state superintendent of public instruction to the board of county commissioners and added to the district's maintenance and operation levy. If the deficiency is restored or reduced by special transfer, the amount so transferred shall be in addition to the amount appropriated to be transferred in such following fiscal year, and shall be apportioned to each school district in the same amount as each would have received had the transfer been made in the year the deficiency occurred. The state department of education shall distribute to the school district the full amount of the special transfer as soon as practical after such transfer is made. In making the levy computations required by this subsection the state department of education shall take into account and consider the full amount of money receipted into the public school income fund from all sources for the given fiscal year. Deficits in the transfer of the appropriated amount of general account revenue to the public school income fund shall be reduced by the amount, if any, that the total amount receipted from other sources into the public school income fund exceeds the official estimated amount

from those sources. The official estimate of receipts from other sources shall be the total amount stated by the legislature in the appropriation bill. The provisions of this subsection shall not apply to any transfers to or from the public education stabilization fund.

5. Any apportionments in any year, made to any school district, which may within the succeeding three (3) year period be found to have been in error either of computation or transmittal, may be corrected during the three (3) year period by reduction of apportionments to any school district to which over-apportionments may have been made or received, and corresponding additions to apportionments to any school district to which under-apportionments may have been made or received. [1963, ch. 13, § 133, p. 27; am. 1963, ch. 322, § 9, p. 919; am. 1967, ch. 243, § 1, p. 707; am. 1969, ch. 144, § 1, p. 466; am. 1972, ch. 352, § 5, p. 1040; am. 1979, ch. 254, § 9, p. 661; am. 1980, ch. 179, § 10, p. 382; am. 1981, ch. 185, § 1, p. 329; am. 1983, ch. 4, § 10, p. 6; am. 1983, ch. 147, § 1, p. 398; am. 1984, ch. 180, § 2, p. 426; am. 1985, ch. 107, § 8, p. 191; am. 1996, ch. 322, § 26, p. 1029; am. 1997, ch. 90, § 1, p. 215; am. 2003, ch. 372, § 12, p. 986; am. 2007, ch. 350, § 6, p. 1028.]

STATUTORY NOTES

Cross References. — Public education stabilization fund, § 33-907.

Public school income fund, § 33-903.

Amendments. — The 2007 amendment, by ch. 350, in the third sentence in subsection 1.a., substituted "The first two payments" for "Each payment" and "thirty percent" for "twenty percent," and added "while the third, fourth and fifth payments shall be approximately twenty percent (20%), ten percent (10%) and ten percent (10%), respectively."

Legislative Intent. — Section 4 of S.L. 2007, ch. 350 provided "It is the legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or public charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff."

Effective Dates. — Section 17 of S.L. 1983, ch. 4 read: "(1) An emergency existing therefor, which emergency is hereby declared

to exist, Sections 3 and 4 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1982.

"(2) An emergency existing therefor, which emergency is hereby declared to exist, Section 12 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1983.

"(3) An emergency existing therefor, which emergency is hereby declared to exist, Sections 2, 5, 6, 7, 8, 9, 10 and 16 of this act shall be in full force and effect on and after passage and approval.

"(4) An emergency existing therefor, which emergency is hereby declared to exist, Sections 13, 14 and 15 of this act shall be in full force and effect on and after March 1, 1983.

"(5) Section 11 of this act shall be in full force and effect on and after July 1, 1983." Approved February 18, 1983.

Section 2 of S.L. 1983, ch. 147 declared an emergency. Approved April 6, 1983.

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

JUDICIAL DECISIONS

ANALYSIS

Ad valorem property tax.
Limit of taxing power.

Ad Valorem Property Tax.

The state's system of public school financing, in which per pupil expenditures varied

among the school districts as a result of variations in the districts' assessed valuations for purposes of an ad valorem property tax,

did not deny equal protection of the law to nor discriminate against students in less affluent school districts with low expenditures. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

Limit of Taxing Power.

Subsection 7 (now subsection 4) does not authorize a board of county commissioners to

levy taxes for the county school fund beyond the amounts certified to it by the state board of education in order to make up a deficit in the county school fund for the preceding year. *Board of Trustees v. Board of County Comm'rs*, 88 Idaho 250, 398 P.2d 442 (1965).

33-1009A. Decrease in weighted average daily attendance. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former section 33-1009A which comprised S.L. 1970, ch. 137, § 1, p. 332, was repealed by S.L. 1972, ch. 352, § 6.

Compiler's Notes. — This section, which

comprised I.C., § 33-1009A, as added by 1972, ch. 374, § 1, p. 1095; am. 1976, ch. 152, § 1, p. 546; am. 1978, ch. 64, § 1, p. 130, was repealed by S.L. 1980, ch. 179, § 1.

33-1010. Apportionments when mines net profits considered. — In any school district in which mines net profits are made a part of the total assessed value of taxable property, should the amount of such net profits certified as required by section 63-2803, Idaho Code, be lower in any year than for the immediately preceding year in an amount equaling five per cent (5%) or more of the total assessed value of taxable property of the district for the preceding year, then the state department of education shall compute the adjusted value of taxable property in the district for the purposes of section 33-1009, Idaho Code, by subtracting from the adjusted value of property in the district for the preceding year, the total of such decrease in mines net profits tax.

The county auditor of each county in which the net profits of mines are made a part of the total assessed value of taxable property of any school district, shall annually examine the reports of mines net profits certified to the county assessor as required by section 63-2803, Idaho Code, and shall certify to the state department of education not later than the fifteenth day of June of each year, the net profits of mines creditable to each school district in said county. [1963, ch. 13, § 134, p. 27; am. 1985, ch. 107, § 9, p. 191.]

33-1011. Taxes to be levied by county commissioners — Determination and certification. — Not later than the second Monday in September of each year the state superintendent of public instruction shall determine and certify to the board of county commissioners the amounts of money as shall be required under the provisions of this chapter. [1963, ch. 13, § 135, p. 127; am. 1979, ch. 254, § 10, p. 661; am. 1985, ch. 107, § 10, p. 191.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

JUDICIAL DECISIONS

Limit of Taxing Power.

Subsection 7 (now subsection 4) of § 33-1009 does not authorize a board of county commissioners to levy taxes for the county school fund beyond the amounts certified to it by the state board of education in order to make up a deficit in the county school fund for

the preceding year. *Board of Trustees v. Board of County Comm'rs*, 88 Idaho 250, 398 P.2d 442 (1965).

Cited in: *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

33-1012. Transmittal of county school moneys. — Not later than the 10th day of each month, beginning August 1, 1981, the county auditor shall compute the moneys in the county school fund and shall transmit not later than that date the amount determined to the treasurer of the state of Idaho for deposit to the public school income fund, and these moneys shall be apportioned to the public schools in the same manner as prescribed by law for other moneys credited to the public school income fund. [I.C., § 33-1012, as added by 1981, ch. 185, § 3, p. 329.]

STATUTORY NOTES

Cross References. — Public school income fund, § 33-903.

Prior Laws. — Former § 33-1012 (1963, ch. 13, § 136, p. 27; am. 1967, ch. 243, § 2, p.

707; am. 1972, ch. 352, § 7, p. 1040; am. 1979, ch. 10, § 1, p. 13; am. 1980, ch. 179, § 11, p. 382) was repealed by S.L. 1981, ch. 185, § 2.

33-1013. County treasurer — County auditor — Duties. — In addition to other duties required by this chapter, the county treasurer shall keep a separate account with each school district situate in whole or in part in his county, placing to the credit of each all moneys received through the proceeds of school district tax levies, and any other moneys due the respective districts under the provisions of law. He shall on the first day of each month give notice to the clerk of the board of any elementary district, of the debits and credits made to the account of such district during the current quarter and the balance on hand both at the beginning and at the end of the preceding quarter.

He shall keep an account of the county school fund, and of any other school funds arising from a county-wide tax levy for school purposes.

He shall pay over the moneys in any fund herein required to be kept, only upon the warrant of the county auditor.

In addition to other duties required of the county auditor by the provisions of this chapter, he shall, from time to time as required by law, draw his warrant upon any fund required to be disbursed to the treasurer of any school district. [1963, ch. 13, § 139, p. 27; am. 1967, ch. 243, § 3, p. 707; am. 1980, ch. 179, § 12, p. 382.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 1967, ch. 243 read: "This act shall become effective on and after the first day of July, 1967; but any apportionments made from the public school income fund, or from any county school

fund, from moneys accumulated in said funds, including tax receipts which may not have been transferred prior to July 1, 1967, shall be apportioned under the law in effect prior to said date."

33-1014. Assessment ratios and equivalency determinations. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1963, ch. 13, § 140, p. 27; am. 1967, ch. 376, § 2, p. 1103; am. 1972, ch. 299, § 1, p. 746; am. 1974, ch. 31, § 1, p. 983; am.

1979, ch. 254, § 11, p. 661; am. 1985, ch. 107, § 11, p. 191, was repealed by S.L. 1994, ch. 316, § 2, effective July 1, 1994.

33-1015. State revenue matching under the national school lunch act. — In school districts where personnel are employed to operate a school lunch program partially funded under provisions of the national school lunch act, all employer paid contributions to the social security administration for school lunch personnel shall be paid from funds received by school districts from the state general account appropriation for public school support. [I.C., § 33-1015, as added by 1994, ch. 428, § 13, p. 1368; am. 2006, ch. 259, § 1, p. 799.]

STATUTORY NOTES

Prior Laws. — Former § 33-1015, which comprised S.L. 1963, ch. 13, § 141, p. 27; am. 1963, ch. 322, § 9 [9a], p. 919; am. 1965, ch. 232, § 4, p. 553; am. 1967, ch. 376, § 3, p. 1103; am. 1978, ch. 291, § 3, p. 713, was repealed by S.L. 1979, ch. 254, § 1.

Amendments. — The 2006 amendment, by ch. 259, deleted "and Idaho's public employee retirement system" following "social security administration."

Federal References. — The National School Lunch Act, referred to in this section, is compiled as 42 U.S.C. §§ 1751 et seq.

Effective Dates. — Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections

33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act."

33-1016. Levies. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1963, ch. 13, § 142, p. 27; am. 1963, ch. 322, § 10, p. 919; am. 1965, ch. 232,

§ 4, p. 553; am. 1967, ch. 376, § 3, p. 1103; am. 1978, ch. 291, § 3, p. 713, was repealed by S.L. 1979, ch. 254, § 1.

33-1017. School safety and health revolving loan and grant fund. — (1) Fund created. There is hereby created a fund in the state treasury to be known as the school safety and health revolving loan and grant fund to which shall be credited all moneys that may be appropriated, apportioned, allocated and paid back to that fund. Moneys in this fund shall be used

exclusively as provided in this section, except that moneys in this fund shall be returned to the budget stabilization fund as provided in this section.

(2) Approval of loan or grant. A school district that does not have the financial resources to abate unsafe or unhealthy conditions identified pursuant to section 33-1613, Idaho Code, and which is eligible to seek additional funds under subsection (5)(b)(ii) of section 33-1613, Idaho Code, may apply to the state treasurer for a loan and, if eligible, a grant from the [school] safety and health revolving loan and grant fund. A school district that has borrowed money from the Idaho safe school facilities loan program may apply for a grant of interest from the [school] safety and health revolving loan and grant fund. The loan or grant shall be approved if the school district's application meets the criteria of section 33-1613, Idaho Code, and of this section. If the board of examiners finds that existing and anticipated loans or grants under this section have depleted the school safety and health revolving loan and grant fund to an extent that the fund does not have available sufficient moneys to loan to an eligible school district, the board of examiners shall declare that additional loans may be made from the budget stabilization fund in section 57-814, Idaho Code, up to any limits of the use of that fund provided by statute or declared by the governor in time of general revenue shortfalls or major disaster.

(3) Conditions of loan or grant — Repayment of loan.

(a) The school district's application shall identify the unsafe or unhealthy conditions that would be abated with the proceeds of the loan or grant and, if a loan, shall propose a method of and timetable for abating those conditions and for repaying the loan.

(b) The state treasurer shall review the application to determine whether the application is for abatement of unsafe or unhealthy conditions as described in section 33-1613, Idaho Code, and to determine whether the estimated costs of abatement and proposed plan of abatement is reasonable. In reviewing the application, the state treasurer may call upon the assistance of the state division of building safety, the state fire marshal, the state department of administration, the state board of education, the state department of education, or other knowledgeable persons to determine whether conditions identified to be abated meet the criteria of section 33-1613, Idaho Code, and to determine whether the plan of abatement, estimated costs of abatement and proposed methods of abatement are reasonable. The state treasurer shall process the application for a loan or grant within thirty-five (35) days after its receipt.

(i) If the state treasurer determines that the application has not identified unsafe or unhealthy conditions as described in section 33-1613, Idaho Code, the state treasurer shall return the application with a written statement that contains reasons why the loan or grant application does not meet the criteria of this section and of section 33-1613, Idaho Code.

(ii) If the state treasurer determines that the application has identified unsafe or unhealthy conditions as described in section 33-1613, Idaho Code, the state treasurer shall then determine whether the application has proposed reasonable methods of and reasonable estimates of costs

of abatement. The state treasurer shall approve the plan of abatement if the school district has proposed a reasonable method of abatement and if its estimated costs of abatement are reasonable; otherwise, the state treasurer shall return the application with a written statement how the application can be amended to qualify.

(c) If the application is for a loan, the state treasurer may accept the school district's proposed method of and timetable for repaying the loan or may impose reasonable alternative or substitute methods of and timetables for repayment consistent with this subsection, which alternative or substitute methods shall be binding on the school district. At a minimum, the school district shall be required to repay in each fiscal year succeeding the year of the loan an amount no less than the lottery proceeds that the school district would otherwise receive for that fiscal year and additional foundation support moneys, if any, accruing as a result of an initial overestimation of state average daily attendance support units and later distribution of residual amounts resulting from fewer support units than originally estimated. The loan shall provide for the school safety and health revolving loan and grant fund, or the budget stabilization fund, to the extent that it was the source of the loan, to intercept the lottery proceeds that would otherwise go to the school district until the loan is fully repaid. In addition, the state treasurer may impose reasonable fiscal conditions on the school district during the term of loan repayment including, but not limited to, restrictions in use of otherwise unrestricted school district moneys to assist in repayment of the loan or in abatement of unsafe or unhealthy conditions, the declaration of a financial emergency during some or all of the term of repayment of the loan, or interception by the school safety and health revolving loan and grant fund of a portion of the state foundation program payments under chapter 10, title 33, Idaho Code, that would otherwise go to the school district to repay the loan. The initial term of the loan shall not exceed ten (10) years, but may be extended in the state treasurer's discretion for another ten (10) years.

(d) If a loan is approved, the state treasurer shall establish a line of credit for the school district and monthly reimburse the school district for costs incurred to abate the unsafe or unhealthy conditions identified as the reason for the loan. The state treasurer may prescribe forms and procedures for administration of this line of credit.

(e) A school district may repay its loan or any portion of its loan in advance at any time without penalty.

(4) Interest. Loans to school districts under this section shall bear interest at the average rate of interest that would be available to the state treasury were the loan funds retained in the state treasury, as determined by the state treasurer.

(5) Certification of loan funds spent. If a school district obtains a loan pursuant to this section, the board of trustees shall certify the total expenditures of loaned funds that were actually spent to abate unsafe and unhealthy conditions.

(6) Excess funds. If any funds loaned pursuant to this section were not spent on abatement of unsafe and unhealthy conditions, they must be

returned to the school safety and health [revolving] loan and grant fund or the budget stabilization fund, as the case may be. This subsection shall be judicially enforceable by the state treasurer, and any amounts due for repayment under this subsection may be recovered by offset from state foundation program moneys that would otherwise be paid to the school district.

(7) Eligibility for grant. After complying with the provisions of section 33-1613, Idaho Code, school districts that borrow money from the Idaho safe schools facilities loan program pursuant to section 33-804A, Idaho Code, or that refinance through the Idaho safe schools facilities loan program loans for money borrowed under this section or that finance abatement of unsafe and unhealthy conditions through indebtedness pursuant to chapter 11, title 33, Idaho Code, may apply for a grant from the school safety and health revolving loan and grant fund to pay for eligible interest costs incurred on loan proceeds used to abate unsafe and unhealthy conditions. If the school district's application for a grant is accepted, then the school district will qualify for a grant of the present value of the qualifying percentage of the interest costs of the loan associated with abating unsafe and unhealthy conditions as follows:

(a) If the school district is participating in the Idaho safe schools facilities loan program, within seven (7) days after the approved school district receives loan proceeds from the Idaho safe schools facilities loan fund, the state treasurer shall provide funds to the school district in the amount of the qualifying percentage of the present value of the interest costs associated with abating unsafe and unhealthy conditions.

(b) If a school district has obtained a loan from the school health and safety revolving loan and grant fund and has refinanced its loan through the Idaho safe schools facilities program and prepays the outstanding principal of its loan, the school district shall be eligible for a grant of the qualifying percentage of the present value of the outstanding interest costs associated with the prepaid principal.

(c) If the school district has financed the abatement of unsafe or unhealthy conditions through indebtedness pursuant to chapter 11, title 33, Idaho Code, within seven (7) days after the school district receives bond proceeds, the state treasurer shall provide funds to the school district in the amount of the qualifying percentage of the present value of the interest costs associated with abating unsafe and unhealthy conditions.

(8) Present value. The present value of the interest costs associated with money borrowed under the Idaho safe schools facilities loan program shall be calculated by the state treasurer using a method of equal annual loan payments and a discount rate of the interest rate prescribed in subsection (4) of this section on the date that the school district receives funds from the Idaho safe schools facilities loan fund. The present value of the unpaid interest costs for principal prepayments to the school safety and health revolving loan and grant fund shall be calculated by the state treasurer by summing the unpaid interest that would be paid without the principal prepayment and discounting it at the interest rate prescribed in subsection (4) of this section on the date that the treasurer receives the prepayment.

The present value of the interest costs associated with money borrowed by a school district in a bond issue shall be calculated by the state treasurer using the school district's actual schedule for making interest payments on the bonds and discounting those interest payments by the interest rate prescribed in subsection (4) of this section on the date that the school district receives funds from the bond issue.

(9) Qualifying percentage. The qualifying percentage of the interest costs of a school district applying for a grant of interest under this section shall be determined as follows: For a school district borrowing money under the Idaho safe schools facilities loan program or refinancing a loan made under this section with money borrowed under the Idaho safe schools facilities program or incurring bonded indebtedness for safe and healthy schools, the state treasurer shall express:

- (a) the total of the bond and plant facilities levies imposed by the school district (including the levy for which the application is made), and
- (b) the total levies imposed by the school district (including the levy for which the application is made)

as a fraction of assessed value for the most recent assessment against which the school district's existing levies are made.

The qualifying percentage of interest granted under this section shall be the higher of the amounts shown in the following tables:

Table 1 — Bond and Plant Facilities Levies

| Bond Plus Plant Facilities Levy | Qualifying Percentage |
|---|-----------------------|
| Less than .0019 | 10% |
| More than .0019 and less than .0029 | 20% |
| More than .0029 and less than .0039 | 30% |
| More than .0039 | 40% |

Table 2 — Total Levies

| Total Levy | Qualifying Percentage |
|---|-----------------------|
| Less than .0060 | 0% |
| More than .0060 and less than .0072 | 25% |
| More than .0072 and less than .0084 | 50% |
| More than .0084 and less than .0096 | 75% |
| More than .0096 | 100% |

(10) Interest costs for abatement of unsafe and unhealthy conditions. The interest costs for abatement of unsafe and unhealthy conditions shall be calculated by determining the percentage of the loan proceeds or prepayment of the loan that will be used to abate unsafe and unhealthy conditions.

(11) Procedures. The state treasurer may prescribe forms for applying for a loan or grant under this section. No actions taken under this section are contested cases or rulemaking subject to chapter 52, title 67, Idaho Code, and none of the contested case or rulemaking procedures of chapter 52, title 67, Idaho Code, apply to actions taken under this section.

(12) The state treasurer's authority to accept applications for and to approve grants of interest from the school safety and health revolving loan

and grant fund shall cease on July 1, 2003. [I.C., § 33-1017, as added by 2000, ch. 219, § 2, p. 607; am. 2001, ch. 326, § 2, p. 1143; am. 2002, ch. 157, § 1, p. 453.]

STATUTORY NOTES

Cross References. — Idaho safe school facilities loan program, § 33-804A.

State department of administration, § 67-5701 et seq.

State division of building safety, § 67-2601A.

State fire marshal, §§ 41-254, 41-255.

Compiler's Notes. — The word "school" has been inserted in brackets in subsection (2) two times to correct the name of the referenced fund, created by this section.

The word "revolving" has been inserted in the first sentence of subsection (6) to correct the name of the referenced fund.

Effective Dates. — Section 3 of S.L. 2000,

ch. 219, provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2000; provided however, this act shall not apply to any expenditure of lottery moneys during the 1999-2000 school year that were legally encumbered before the time of passage and approval of this act." Approved April 12, 2000.

Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.

Section 2 of S.L. 2002, ch. 157 declared an emergency. Approved March 21, 2002.

33-1018. Public school discretionary funding variability. — The legislature shall annually state in the appropriation for the educational support program/division of operations the estimate of the total discretionary funding provided per support unit. The department of education shall, before the end of each fiscal year, calculate the actual discretionary funding available per support unit.

(1) If the total estimated discretionary funding per support unit stated in the appropriation for the educational support program/division of operations is lower than the actual discretionary funding available per support unit, then the state controller shall multiply the difference by the number of actual support units, and transfer the result from the public school income fund to the public education stabilization fund and the final distributions to school districts from the department of education shall be reduced by a like amount.

(2) If the total estimated discretionary funding per support unit stated in the appropriation for the educational support program/division of operations is greater than the actual discretionary funding available per support unit, then the state controller shall multiply the difference by the number of actual support units, and transfer the result from the public education stabilization fund to the public school income fund. This transfer shall be limited to moneys available in the public education stabilization fund. Moneys transferred from the public education stabilization fund to the public school income fund under the provisions of this section are hereby continuously appropriated for the educational support program/division of operations. [I.C., § 33-1018, as added by 2003, ch. 372, § 13, p. 986.]

STATUTORY NOTES

Cross References. — Public education stabilization fund, § 33-907.

Public school income fund, § 33-903.

33-1018A. Other uses of public education stabilization fund. —

(1) If, in any fiscal year, general fund revenues are inadequate to sustain general fund appropriations made for that year by the legislature, then the board of examiners may transfer moneys from the public education stabilization fund to the general fund. The maximum amount that may be transferred by the board in any fiscal year shall be determined by dividing the total of all general fund appropriations for the educational support program by the total of all general fund appropriations, and multiplying the result by the amount of the shortfall in general fund revenues.

(2) The governor may recommend, and the legislature may authorize, the appropriation of moneys from the public education stabilization fund to offset declining distributions from the public school earnings reserve fund to the public school income fund. [I.C., § 33-1018A, as added by 2003, ch. 372, § 14, p. 986.]

STATUTORY NOTES

Cross References. — Public education stabilization fund, § 33-907.

Public school income fund, § 33-903.

Public school earnings reserve fund, § 33-902A.

33-1018B. School building maintenance matching funds. — If the amount of money appropriated from the school district building account created in section 33-905, Idaho Code, is insufficient to meet the state matching fund requirements of section 33-1019, Idaho Code, then such insufficiency shall be made up with a distribution from the public education stabilization fund created in section 33-907, Idaho Code. [I.C., § 33-1018B, as added by 2006, ch. 311, § 7, p. 957.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 2006, ch. 311 provided “LEGISLATIVE FINDINGS AND INTENT. The Legislature hereby finds that:

“(1) Section 1, Article IX, of the Constitution of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judi-

cial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

"(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court's February 5, 2001, decision and said:

"In sum, the evidence in the record clearly supports the district court's 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature's duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: '[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.' Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

"(7) In response to the Supreme Court's 2005 decision, and mindful that the Supreme Court has recognized the Legislature's efforts, following the district court's decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature's responsibility under Section 1, Article IX, of the Constitution of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

"(8) In proposing this Act, it is the intent of the Legislature to:

"(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or

replacement of unsafe school facilities; and

"(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district's relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

"(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

"(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

"(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay."

Compiler's Notes. — Section 13 of S.L. 2006, ch. 311 provided: "Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect."

33-1019. Allocation for school building maintenance required. —

(1) School districts shall annually allocate moneys for school building maintenance from any source available to the district equal to at least two percent (2%) of the replacement value of school buildings, less the receipt of state funds as provided in this section. Any school district expending more than four percent (4%) of the replacement value of school buildings for school building maintenance in any single fiscal year, beginning with the

expenditures of fiscal year 2005, may apply the excess as a credit against the two percent (2%) requirement of this section until such credit is depleted or fifteen (15) years have expired. The state shall annually provide funds to be allocated for school building maintenance as follows:

(a) Divide one (1) by the school district's value index for the fiscal year, as calculated pursuant to section 33-906B, Idaho Code; and

(b) Multiply the result by one-half of one percent (0.5%) of the replacement value of school buildings.

(c) For purposes of the calculation in this subsection (1), public charter schools shall be assigned a value index of one (1).

(2) State funds shall be appropriated through the educational support program/division of facilities, and disbursed from the school district building account. The order of funding sources used to meet the state funding requirements of this section shall be as follows:

(a) State lottery funds distributed pursuant to section 33-905(2), Idaho Code;

(b) If state lottery funds are insufficient to meet the state funding requirements of this section, then other state funds available pursuant to section 33-905(3), Idaho Code, shall be utilized; and

(c) If the funds in paragraphs (a) and (b) of this subsection (2) are insufficient to meet the state funding requirements of this section, then funds available pursuant to section 33-1018B, Idaho Code, shall be utilized.

(3) Moneys allocated for school building maintenance shall be used exclusively for the maintenance and repair of school buildings or any serious or imminent safety hazard on the property of said school buildings as identified pursuant to chapter 80, title 39, Idaho Code, and shall be utilized, first, to abate serious or imminent safety hazards, as identified pursuant to chapter 80, title 39, Idaho Code. Unexpended moneys in a school district's school building maintenance allocation shall be carried over from year to year, and shall remain allocated for the purposes specified in this subsection (3). The replacement value of school buildings shall be determined by multiplying the number of square feet of building floor space in school buildings by eighty-one dollars and forty-five cents (\$81.45). Notwithstanding the definition in subsection (4) of this section, school buildings that are less than one (1) year old on the first day of school shall not be used in the replacement value calculation. The joint finance-appropriations committee shall annually review the replacement value per square foot when setting appropriations for the educational support program, and may make adjustments to this figure as necessary. School districts shall submit the following to the state department of education by not later than December 1:

(a) The number of square feet of school building floor space; and

(b) The funds and fund sources allocated for school building maintenance and any unexpended allocations carried forward from prior fiscal years; and

(c) The projects on which moneys from the school district's school building maintenance allocation were expended, and the amount and categories of expenditures; and

(d) The planned uses of the school district's school building maintenance allocation.

The state department of education shall transmit a summary of such reports to the legislature by not later than January 15 of the following year.

(4) For the purposes of this section:

(a) "School building" means buildings that are owned by the school district or leased by the school district through a lease-purchase agreement and are regularly occupied by students.

(b) "School district" means a school district or public charter school.

(c) "Annually" means each fiscal year. [I.C., § 33-1019, as added by 2006, ch. 311, § 8, p. 957; am. 2007, ch. 142, § 1, p. 412; am. 2007, ch. 354, § 6, p. 1051.]

STATUTORY NOTES

Cross References. — School district building account, § 33-905.

Amendments. — This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 142, in the introductory paragraph in subsection (1), in the first sentence, substituted "shall annually allocate moneys for school building maintenance" for "shall annually deposit to a school building maintenance fund moneys" and "receipt of state funds" for "deposit of state funds," added the second sentence, and in the last sentence, substituted "to be allocated for school building maintenance as follows" for "to be deposited into the school building maintenance fund as follows"; in the introductory paragraph in subsection (3), in the first sentence, substituted "Moneys allocated for school building maintenance" for "Moneys in a school district's building maintenance fund," and inserted "or any serious or imminent safety hazard on the property of said school buildings as identified pursuant to chapter 80, title 39, Idaho Code," in the second sentence, substituted "maintenance allocation" for "maintenance fund," and added "and shall remain allocated for the purposes specified in this subsection (3)," and added the fourth sentence; in subsection (3)(b), substituted "fund sources allocated for school building maintenance and any unexpended allocations carried forward" for "fund sources deposited into the school district's school building maintenance fund and the fund balance carried forward"; in subsections (3)(c) and (3)(d), substituted "maintenance allocation" for "maintenance fund"; in subsection (3)(c), deleted "from the fund" from the end; in subsection (3)(d), deleted "monies in" following "uses of"; inserted "regularly" in subsection (4)(a); and added subsection (4)(c).

The 2007 amendment, by ch. 354, substituted "eighty-one dollars and forty-five cents"

for "eighty dollars" in the introductory paragraph in subsection (3).

Legislative Intent. — Section 1 of S.L. 2006, ch. 311 provided "LEGISLATIVE FINDINGS AND INTENT. The Legislature hereby finds that:

"(1) Section 1, Article IX, of the Constitution of the state of Idaho provides that 'it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.'

"(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

"(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included 'a safe environment conducive to learning' among the statutory definitions of thoroughness.

"(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of 'a safe environment conducive to learning' and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article

IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

"(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

"(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court's February 5, 2001, decision and said:

"In sum, the evidence in the record clearly supports the district court's 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature's duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: '[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.' Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

"(7) In response to the Supreme Court's 2005 decision, and mindful that the Supreme Court has recognized the Legislature's efforts, following the district court's decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature's responsibility under Section 1, Article IX, of the Constitution of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

"(8) In proposing this Act, it is the intent of the Legislature to:

"(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of as-

sisting school districts to fund repair or replacement of unsafe school facilities; and

"(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district's relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

"(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

"(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

"(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay."

Compiler's Notes. — Section 13 of S.L. 2006, ch. 311 provided: "Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect."

Effective Dates. — Section 3 of S.L. 2007, ch. 142 declared an emergency retroactively to July 1, 2006 and approved March 21, 2007.

33-1020. Idaho digital learning academy funding. — Of the moneys appropriated for the educational support program, an amount shall be distributed to support the Idaho digital learning academy, created pursuant

to chapter 55, title 33, Idaho Code. For the purposes of this section, an “enrollment” shall be counted each time an Idaho school age child enrolls in an Idaho digital learning academy class. A single child enrolled in multiple classes shall count as multiple enrollments. Summer enrollments shall be included in the fiscal year that begins that summer. The amount distributed shall be calculated as follows:

(1) A fixed base amount shall be distributed, equal to the current fiscal year’s statewide average salary-based apportionment funding per midterm support unit, multiplied by seven (7).

(2) A variable base amount shall be distributed each time the number of enrollments meets or exceeds an increment of five thousand (5,000). The amount so distributed shall be equal to the number of such increments, multiplied by the current fiscal year’s statewide average salary-based apportionment funding per midterm support unit, multiplied by four and thirty-three hundredths (4.33).

(3) A variable amount shall be distributed, equal to the number of enrollments multiplied by the current fiscal year’s statewide average salary-based apportionment funding per midterm support unit, divided by one hundred forty-three (143).

The state department of education shall make an estimated distribution of funds to the Idaho digital learning academy by no later than July 31 of each fiscal year, consisting of eighty percent (80%) of the estimated funding for the fiscal year. The balance of all remaining funds to be distributed, pursuant to the calculations in this section, shall be distributed by no later than May 15 of the same fiscal year. [I.C., § 33-1020, as added by 2007, ch. 353, § 12, p. 1045.]

STATUTORY NOTES

Legislative Intent. — Section 6 of S.L. 2007, ch. 353 provided “It is legislative intent that the Idaho Safe and Drug-Free School Program shall include the following:

“(1) Districts will develop a policy and plan which will provide a guide for their substance abuse problems.

“(2) Districts will have an advisory board to assist each district in making decisions relating to the programs.

“(3) The districts’ substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(4) Districts shall submit an annual evaluation of their programs to the State Department of Education as to the effectiveness of their programs.”

CHAPTER 11

SCHOOL BONDS

SECTION.

33-1101. Existing issues unimpaired.

33-1102. Purposes for which bonds may be issued.

33-1103. Definitions — Bonds — Limitation on amount — Elections to authorize issuance. [Effective until January 1, 2009.]

33-1103. Definitions — Bonds — Limitation on amount — Elections to au-

SECTION.

thorize issuance. [Effective January 1, 2009.]

33-1104 — 33-1106. [Repealed.]

33-1107. Plan and form of bonds — Amortization.

33-1108. Printing of bonds.

33-1109. Signature and recording of bonds.

33-1110. [Repealed.]

33-1111. Sale of bonds.

- SECTION.
33-1112. Payment, deposit and use of funds.
33-1113. Disposition of unexpended balance.
33-1114. Levy for liquidation of bonded indebtedness.
33-1115. District responsible for bonds.
33-1116. Refunding bonds.
33-1117. Call or redemption of bonds — Notice.
33-1118. Compliance with statute is notice of exercise of option.

- SECTION.
33-1119. Redemption of bonds held by state.
33-1120. Disposition of money remaining after redemption.
33-1121. Advance refunding bonds.
33-1122. Application of other statutes.
33-1123. Authorization.
33-1124. Resolution not to be amended or repealed.
33-1125. Application of bond proceeds — Limitations.

33-1101. Existing issues unimpaired. — Bonds, heretofore issued on any plan, shall not be impaired or disturbed by this act, but until satisfied in full or refunded, bonds shall be entitled to all the support of the law existing at the time the issue was made and of such law as became subsequently available to the support of said issues.

Nor shall this act disturb or impair or invalidate any bond proceedings which have been completed to the point of bond election having been held by the time this act becomes effective [July 1, 1963]. [1963, ch. 13, § 98, p. 27.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1963, ch. 13 which is compiled throughout Title 33 of the Idaho Code.

JUDICIAL DECISIONS

Cited in: Gardner v. School Dist. No. 55, 108 Idaho 434, 700 P.2d 56 (1985).

33-1102. Purposes for which bonds may be issued. — The purposes for which bonds may be issued shall be: To acquire, purchase or improve a school site or school sites; to build a schoolhouse or schoolhouses or other building or buildings; to demolish or remove school buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all lighting, heating, ventilation and sanitation facilities and appliances necessary to maintain and operate the buildings of the district; and to purchase school buses. [1963, ch. 13, § 99, p. 27.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Improvement of Sites. Issuance of bonds was not limited to mere purchase of school sites but they could be issued for improvement of such sites. King v. Independent Sch. Dist. No. 37, 46 Idaho 800, 272 P. 507 (1928).

33-1103. Definitions — Bonds — Limitation on amount — Elections to authorize issuance. [Effective until January 1, 2009.] — (1) For the purposes of this chapter the following definitions shall have the meanings specified: “Market value for assessment purposes” means the amount of the last preceding equalized assessment of all taxable property

and all property exempt from taxation pursuant to section 63-602G, Idaho Code, within the school district on the tax rolls completed and available as of the date of approval by the electorate in the school bond election. "Aggregate outstanding indebtedness" means the total sum of unredeemed outstanding bonds, minus all moneys in the bond interest and redemption fund or funds accumulated for the redemption of such outstanding bonds, and minus the sum of all taxes levied for the redemption of such bonds, with the exception of that portion of such tax levies required for the payment of interest on bonds, which taxes remain uncollected. "Issue," "issued," or "issuance" means a formal delivery of bonds to any purchaser thereof and payment therefor to the school district.

(2) The board of trustees of any school district, upon approval of a majority thereof, may submit to the qualified school district electors of the district the question as to whether the board shall be empowered to issue negotiable coupon bonds of the district in an amount and for a period of time to be named in the notice of election.

(3) An elementary school district which employs not less than six (6) teachers, or a school district operating an elementary school or schools, and a secondary school or schools, or issuing bonds for the acquisition of a secondary school or schools, may issue bonds in an amount not to exceed five percent (5%) of the market value for assessment purposes thereof, less the aggregate outstanding indebtedness; and no other school district shall issue bonds in an amount to exceed at any time two percent (2%) of the market value for assessment purposes thereof less the aggregate outstanding indebtedness. The market value for assessment purposes, the aggregate outstanding indebtedness and the unexhausted debt-incurring power of the district shall each be determined as of the date of approval by the electors in the school bond election.

(4) Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed, and the qualifications of electors voting or offering to vote shall be, as provided in sections 33-401 through 33-406, Idaho Code.

(5) The question shall be approved only if the percentage of votes cast at such election were cast in favor thereof is that which now, or may hereafter be, set by the constitution of the state of Idaho. Upon such approval of the issuance of bonds, the same may be issued at any time after the date of such election. [1963, ch. 13, § 100, p. 27; am. 1973, ch. 282, § 3, p. 597; am. 1974, ch. 4, § 1, p. 20; am. 1975, ch. 88, § 1, p. 181; am. 1979, ch. 114, § 1, p. 359; am. 1979, ch. 254, § 12, p. 661; am. 1980, ch. 205, § 1, p. 469; am. 1980, ch. 350, § 12, p. 887; am. 1996, ch. 322, § 27, p. 1029; am. 2001, ch. 336, § 1, p. 1194; am. 2007, ch. 358, § 1, p. 1057.]

STATUTORY NOTES

Cross References. — Qualifications of school electors, § 33-405.

Amendments. — This section was amended by two 1980 acts which appear to be compatible and have been compiled together.

The amendment by S.L. 1980, ch. 205, in

the first sentence of the third paragraph, changed "per centum" to "percent" in both places it appears.

The amendment by S.L. 1980, ch. 350, in the first paragraph, substituted the words "Market value for assessment purposes" for

"Assessed valuation"; in the third paragraph, substituted "five percentum (5%)" for "twenty-five per centum (25%)", substituted "two percentum (2%)" for "ten percentum (10%)" and substituted the words "market value for assessment purposes" for "assessed valuation" in the three places it appears.

The 2007 amendment, by ch. 358, added the subsection designations; and in the first sentence in subsection (1), inserted "and all property exempt from taxation pursuant to section 63-602G, Idaho Code."

Compiler's Notes. — For this section as effective January 1, 2009, see the following section, also numbered § 33-1103.

Sections 33-401 through 33-406, referred to

in subsection (4), were amended and redesignated as 33-402, 33-403, 33-404, 33-405, 33-406 and 33-407, respectively by S.L. 1982, ch. 60. The reference in subsection (4) should now be to chapter 4, title 33, Idaho Code.

Effective Dates. — Section 4 of S.L. 1973, ch. 282 declared an emergency. Approved March 16, 1973.

Section 3 of S.L. 1974, ch. 4 declared an emergency. Approved February 14, 1974.

Section 2 of S.L. 1980, ch. 205 declared an emergency. Approved March 28, 1980.

Section 3 of S.L. 2001, ch. 336 declared an emergency. Approved April 4, 2001.

Section 2 of S.L. 2007, ch. 358 declared and emergency. Approved April 4, 2007.

JUDICIAL DECISIONS

Cited in: *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Approval by electors.
Calling of election.
Liability of officers.
Limitation on amount.
Ministerial duty of clerk.
Notice of election.

Approval by Electors.

Portion of plan for reorganization of school districts which provided that the debt of the two districts, as formerly organized, be assumed by the new school district which resulted in making taxpayers of one of the old school districts proportionately liable for the bonded indebtedness of the other old school district was invalid where the voters were not limited to those persons possessing the qualifications of voting at a bond election and the plan was not carried by the required two-thirds majority required to approve a bonded indebtedness. In re Joint Class A Sch. Dist. No. 370, 77 Idaho 453, 295 P.2d 249 (1956).

Calling of Election.

Provisions of former section as to calling of election were mandatory if invoked before election, but after election provisions were construed as directory if the failure to fully comply did not affect the result of the election. *Keyes v. Class "B" School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

Where chairman of board approved submission of bond issue to electorate but did not vote on motion, but two of the other three members of the board voted for submission of bond issue to electorate, there was a sufficient compliance requiring approval by majority of board. *Keyes v. Class "B" School Dist. No. 421*,

74 Idaho 314, 261 P.2d 811 (1953).

Calling of election for bond issue was valid where resolution provided for "advertising the same bond issue as was advertised in 1951" and there was attached to minutes of the meeting a copy of 1951 resolution calling for bond issue, which was full and complete. *Keyes v. Class "B" School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

Liability of Officers.

Any acts of negligence, misconduct, mistake, or omissions on part of officers of school district in paying out funds of district could not estop district from maintaining action to recover back money wrongfully taken. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

Limitation on Amount.

Common school districts could incur indebtedness during any year in amount which did not exceed its revenue and income for that year, and orders for warrants did not exceed ninety-five per cent of such income. *Boise City Nat'l Bank v. Independent Sch. Dist. No. 40*, 33 Idaho 26, 189 P. 47 (1920).

Ministerial Duty of Clerk.

Where a bond issue was authorized prior to March 31, 1961, by a vote of electors held in a

class A school district in an amount more than 10% but less than 15%, it was valid and the defendant clerk's refusal to sign such bonds, being a ministerial duty only, was without legal justification. *Hammond v. Bingham*, 83 Idaho 314, 362 P.2d 1078 (1961).

amount of "not exceeding \$275,000, bearing interest at a rate of not exceeding 4 per cent per annum * * *" substantially complied with the former section governing the giving of notice. *Keyes v. Class "B" School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

Notice of Election.

Notice of election covering bond issue in

33-1103. Definitions — Bonds — Limitation on amount — Elections to authorize issuance. [Effective January 1, 2009.] — (1) For the purposes of this chapter the following definitions shall have the meanings specified: "Market value for assessment purposes" means the amount of the last preceding equalized assessment of all taxable property and all property exempt from taxation pursuant to section 63-602G, Idaho Code, and property exempt from taxation pursuant to section 63-602KK, Idaho Code, within the school district on the tax rolls completed and available as of the date of approval by the electorate in the school bond election. "Aggregate outstanding indebtedness" means the total sum of unredeemed outstanding bonds, minus all moneys in the bond interest and redemption fund or funds accumulated for the redemption of such outstanding bonds, and minus the sum of all taxes levied for the redemption of such bonds, with the exception of that portion of such tax levies required for the payment of interest on bonds, which taxes remain uncollected. "Issue," "issued," or "issuance" means a formal delivery of bonds to any purchaser thereof and payment therefor to the school district.

(2) The board of trustees of any school district, upon approval of a majority thereof, may submit to the qualified school district electors of the district the question as to whether the board shall be empowered to issue negotiable coupon bonds of the district in an amount and for a period of time to be named in the notice of election.

(3) An elementary school district which employs not less than six (6) teachers, or a school district operating an elementary school or schools, and a secondary school or schools, or issuing bonds for the acquisition of a secondary school or schools, may issue bonds in an amount not to exceed five percent (5%) of the market value for assessment purposes thereof, less the aggregate outstanding indebtedness; and no other school district shall issue bonds in an amount to exceed at any time two percent (2%) of the market value for assessment purposes thereof less the aggregate outstanding indebtedness. The market value for assessment purposes, the aggregate outstanding indebtedness and the unexhausted debt-incurring power of the district shall each be determined as of the date of approval by the electors in the school bond election.

(4) Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed, and the qualifications of electors voting or offering to vote shall be, as provided in sections 33-401 through 33-406, Idaho Code.

(5) The question shall be approved only if the percentage of votes cast at such election were cast in favor thereof is that which now, or may hereafter

be, set by the constitution of the state of Idaho. Upon such approval of the issuance of bonds, the same may be issued at any time after the date of such election. [1963, ch. 13, § 100, p. 27; am. 1973, ch. 282, § 3, p. 597; am. 1974, ch. 4, § 1, p. 20; am. 1975, ch. 88, § 1, p. 181; am. 1979, ch. 114, § 1, p. 359; am. 1979, ch. 254, § 12, p. 661; am. 1980, ch. 205, § 1, p. 469; am. 1980, ch. 350, § 12, p. 887; am. 1996, ch. 322, § 27, p. 1029; am. 2001, ch. 336, § 1, p. 1194; am. 2007, ch. 358, § 1, p. 1057; am. 2008, ch. 400, § 6, p. 1100.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 400, in the first sentence in subsection (1), inserted “and property exempt from taxation pursuant to section 63-602KK, Idaho Code.”

effective until January 1, 2009, see the preceding section, also numbered § 33-1103.

Effective Dates. — Section 10 of S.L. 2008, ch. 400 provided that the act should take effect on and after January 1, 2009.

Compiler's Notes. — For this section as

33-1104. Period of debt limitations. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, comprising S.L. 1963, ch. 13, § 100A, p. 27, was repealed by S.L. 1965, ch. 121, § 1.

33-1105, 33-1106. Approval by boards of county commissioners — When necessary — Appeal from order of county commissioners. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1963, ch. 13, §§ 101 and 102, p. 27, were repealed by S.L. 1978, ch. 95, § 1.

33-1107. Plan and form of bonds — Amortization. — School district bonds shall be issued in denominations of one hundred dollars (\$100) or multiples thereof, not to exceed one hundred thousand dollars (\$100,000), and in form prescribed by the state superintendent of public instruction.

No school district bonds shall be issued except upon an amortization plan, each issue of bonds to be redeemed in full within twenty (20) years from the date of the bonds. The first amortized principal payment shall mature and be payable not more than two (2) years from and after the date of the bonds, and the various annual maturities of any issue of bonds shall as nearly as practicable be in such principal amounts as will, together with accruing interest on all outstanding bonds of such issue, be met and paid by an equal annual tax levy during the term for which such bonds shall be issued. No bond shall mature and be payable as to principal in partial payments.

Each bond shall bear interest from the date of issue, payable semiannually on the first days of such months as shall be determined by the board of trustees, at such interest rate as said board may determine. Each bond of any issue shall be numbered in a consecutive series. Each interest payment

on each bond shall be evidenced by an interest coupon thereto attached. Such coupons shall be numbered in a consecutive series; shall be identified with the bond to which attached; shall show the number and name of the issuing school district, and the date and place of payment of such interest.

The foregoing plan and form of bonds and bonding may be departed from whenever in the judgment of the board of trustees such departure will result to the benefit and advantage of the district, and the board of trustees may issue and sell such bonds with such annual maturities as it shall determine either prior to or after the fixing of the interest rates such bonds will bear, and in every such instance it shall be permissible for the board of trustees to issue such bonds in the annual maturities so determined upon and bearing the rate or rates of interest ascertained upon the sale of such bonds, and the plan and form thereof together with the contract, if any, for the issue must be approved by the state superintendent of public instruction. [1963, ch. 13, § 103, p. 27; am. 1963, ch. 263, § 1, p. 672; am. 1972, ch. 121, § 1, p. 240; am. 1988, ch. 135, § 1, p. 242.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Effective Dates. — Section 2 of S.L. 1963, ch. 263, provided that the act should take

effect from and after July 1, 1963.

Section 3 of S.L. 1972, ch. 121, declared an emergency. Approved March 10, 1972.

JUDICIAL DECISIONS

Cited in: Muench v. Paine, 93 Idaho 473, 463 P.2d 939 (1970).

33-1108. Printing of bonds. — Bonds and coupons shall be printed or lithographed in the form prescribed by section 33-1107, Idaho Code, at the expense of the purchaser purchasing the same from the issuing district. [1963, ch. 13, § 104, p. 27; am. 1977, ch. 164, § 1, p. 425.]

33-1109. Signature and recording of bonds. — Each bond shall be signed by the chairman of the board of trustees and countersigned by the clerk; and the seal of the district, if it have a seal, shall be attached. The attached coupons shall be signed by the clerk, personally or by facsimile.

All bonds shall be recorded by the treasurer of the district who shall keep record of the number, amount and status of the issue, together with the name of the successful bidder therefor. [1963, ch. 13, § 105, p. 27.]

33-1110. Preferential right of state to purchase. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section which comprised 1963, ch. 13, § 106, p. 27; am. 1969, ch. 446, § 2, p. 1326 was repealed by S.L. 1977, ch. 164, § 2.

33-1111. Sale of bonds. — School bonds may be sold at private sale, as provided in section 57-232, Idaho Code, after notice as hereinafter provided,

or may be sold at public sale as hereinafter provided.

If bonds are sold at private sale, notice of the intention to sell such bonds at private sale shall be published once in the name of the issuer in a newspaper of general circulation within the issuer's boundaries at least three (3) days prior to the time scheduled by the issuer for approving the private sale of such bonds. Failure to comply with this requirement shall not invalidate the sale of the bonds, so long as the issuer has made a good faith effort to comply.

If the bonds are sold at public sale the board of trustees shall give notice of its intent to sell a bond issue.

The notice shall be published once in a newspaper published in this state, at least one (1) week prior to the day bids are opened. Said notice shall describe the issue of bonds; shall state that the board of trustees will receive sealed bids until a specified day and hour; and that said bids will be opened at a regular or special meeting of the board at a time and place to be named in the notice. Said notice may require such deposits of forfeits as the board may deem necessary.

At the meeting held at the time and place named in the notice, the board of trustees shall open the bids, and may sell the same to whomever shall make the bid most advantageous to the school district, and the deposits of the unsuccessful bidders shall thereupon be returned to them. Should the successful bidder fail or refuse to tender payment of the amount required for the purchase of the issue within ten (10) days after tender to him of the executed bonds and a certified copy of the bond proceedings, his deposit shall be forfeited; and the board may in its judgment accept the bid next most advantageous, readvertise the issue as before, or sell the bonds at private sale.

The board of trustees may reject any or all bids, and sell the bonds at private sale when this is found to be in the best interest of the district.

In lieu of receiving sealed bids, the board of trustees may provide for the public sale of bonds by electronic bidding as provided in section 57-233, Idaho Code.

No school bond shall at any time be sold at less than its par value. [1963, ch. 13, § 107, p. 27; am. 1969, ch. 466, § 3, p. 1326; am. 1977, ch. 164, § 3, p. 425; am. 1987, ch. 51, § 1, p. 84; am. 2001, ch. 336, § 2, p. 1194.]

STATUTORY NOTES

Cross References. — Publication of notices, § 60-109.

Section 3 of S.L. 2001, ch. 336 declared an emergency. Approved April 4, 2001.

Effective Dates. — Section 2 of S.L. 1987, ch. 51 declared an emergency. Approved March 16, 1987.

33-1112. Payment, deposit and use of funds. — All moneys received from the sale of school bonds shall be paid immediately into the treasury of the district. The treasurer shall deposit such funds according to the provisions of the Public Depository Law, separate from any other funds of the school district. Said funds shall be immediately available for the purposes approved by the electors of the district. Proceeds of the sale of

bonds may be used to pay architectural and engineering costs incurred in any construction authorized by electors; to pay legal and fiscal fees; to pay publishing, printing and election costs precedent to the issuance of bonds, including the printing of the bonds; or to reimburse any other funds of the district used for the above purposes. [1963, ch. 13, § 108, p. 27.]

STATUTORY NOTES

Cross References. — Public Depository

Law, §§ 57-101 et seq.

State depository law, § 67-2723 et seq.

33-1113. Disposition of unexpended balance. — Whenever there shall remain any balance of funds arising from the sale of bonds over and above the amount necessary to meet the requirements approved by the electors, such balance shall be placed in the bond interest and redemption fund, to be deposited or invested as provided by law for such fund, and applied only to the redemption of and payment of interest on, any bond issue of the district. [1963, ch. 13, § 109, p. 27.]

33-1114. Levy for liquidation of bonded indebtedness. — Whenever it shall appear that the board of trustees of any school district has failed to certify to the board of county commissioners the levy required in section 33-802, Idaho Code, said board of county commissioners shall, in addition to all other levies set by them, set levies sufficient to meet all accruing bond, bond interest and judgment obligations of the district maturing during the year when such levies shall be collected and paid. [1963, ch. 13, § 110, p. 27; am. 1979, ch. 254, § 13, p. 661; am. 1996, ch. 322, § 28, p. 1029.]

STATUTORY NOTES

Effective Dates. — Section 73 of S.L.

1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

33-1115. District responsible for bonds. — The faith of each district is solemnly pledged for the payment of interest and redemption of principal on all bonds lawfully and validly issued. [1963, ch. 13, § 111, p. 27.]

JUDICIAL DECISIONS

Cited in: Muench v. Paine, 93 Idaho 473, 463 P.2d 939 (1970).

33-1116. Refunding bonds. — The board of trustees of any school district may, without submitting the question to a vote of the electors of the district, issue negotiable coupon bonds in the form prescribed in section 33-1107, [Idaho Code,] for the purpose of refunding any outstanding bonded indebtedness of the district when the same can be done with profit and advantage to the district, and without creating any additional indebtedness

or liability. The proceeds of bonds so issued shall be applied solely to the refunding of outstanding bonded indebtedness of the district; and such bonds shall be sold and the proceeds thereof deposited in the same manner as for any other bonds of the school district. [1963, ch. 13, § 112, p. 27.]

33-1117. Call or redemption of bonds — Notice. — The board of trustees of any school district having outstanding bonds which are redeemable or callable before final maturity, having sufficient money in its bond interest and redemption fund may redeem one (1) or more bonds, on any callable or redeemable date. If such bonds are held by the department of finance, notice shall be given said department not less than thirty (30) days prior to such redemption date. Otherwise, notice shall be given by publication, not less than thirty (30) days prior to said redemption date, in a newspaper in which the district lies. The notice shall give the name, series and number of the bond or bonds which will be redeemed; the place of redemption; and shall state that after the date of the proposed payment, interest on the said bonds will cease. In addition thereto, like notice shall be given to the holder of the bond or bonds if known; to the fiscal agent if any; to the bank or banks through which the bonds to be redeemed are payable, and to "The Bond Buyer," a publication printed in New York City. [1963, ch. 13, § 113, p. 27; am. 1969, ch. 466, § 4, p. 1326.]

STATUTORY NOTES

Cross References. — Publication requirements, § 60-109.

referred to in the last sentence, may be contacted at <http://www.bondbuyer.com>.

Compiler's Notes. — The Bond Buyer,

33-1118. Compliance with statute is notice of exercise of option. — A compliance with the provisions of section 33-1117 shall be deemed sufficient notice to the owner or owners of such bonds that the school district has exercised its option to pay and redeem the bonds described, and interest thereon shall cease at the redeemable or callable date named in the notice. [1963, ch. 13, § 114, p. 27.]

33-1119. Redemption of bonds held by state. — Whenever the bonds of any school district have been purchased and are held by the department of finance and any said bond, or the interest on any said bond, becomes due and payable, the treasurer of the district shall remit to said department the amount of money required to pay and redeem the same. The said department, upon finding such payment in order, shall mark such bonds or interest coupons "canceled," and return the same to the treasurer of the school district. [1963, ch. 13, § 115, p. 27; am. 1969, ch. 466, § 5, p. 1326.]

33-1120. Disposition of money remaining after redemption. — Any money remaining in the bond interest and redemption fund of any school district after all of any issue of school bonds and all interest thereon have been paid, redeemed and canceled shall be held to apply against the redemption of any other bonds issued by the district or, such money may be

credited to the school plant facilities reserve fund; if the district has not established such fund, such money may be transferred to the credit of the general fund of the district. Any transfer or credit authorized by this section shall be upon resolution of the board of trustees. [1963, ch. 13, § 116, p. 27; am. 1996, ch. 341, § 1, p. 1146.]

33-1121. Advance refunding bonds. — Whenever any school district has outstanding bonds which may be called and redeemed prior to their maturities, the board of trustees of any such district may issue refunding bonds in advance of the date of calling and redeeming such outstanding bonds for the purpose of redeeming the same, without submitting the question of issuing refunding bonds to the electors of the district, when the net interest cost of the refunding bonds shall not exceed the net interest cost of the bonds to be refunded.

“Net interest cost” of a proposed issue of refunding bonds is defined as the total amount of interest to accrue on said refunding bonds from their date to their respective maturities, plus the total amount of premiums payable to the holders of said outstanding bonds as a condition to their redemption, less the amount of any premium above their par value at which said refunding bonds are being or have been sold. “Net interest cost” of an outstanding issue, or issues, to be refunded is defined as the total amount of interest which would accrue on said outstanding bonds from the date of the proposed refunding bonds to the respective maturity dates of said outstanding bonds to be refunded. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturities.

Two (2) or more issues of outstanding bonds may be refunded by a single issue of refunding bonds only if the taxable property, upon which taxes are levied to pay the interest and principal payments of the outstanding bonds, is identical as to each issue proposed to be refunded by a single issue of refunding bonds.

In all other respects, the issuance of advance refunding bonds shall be governed by and subject to the limitations described in section 57-504, Idaho Code. [1965, ch. 224, § 1, p. 512; am. 2005, ch. 392, § 1, p. 1317.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2005, ch. 392 declared an emergency. Approved April 14, 2005.

33-1122. Application of other statutes. — The plan, form and amortization of refunding bonds shall be as prescribed by Section 33-1107, [Idaho Code,] except that they shall be denominated refunding bonds and shall show thereon the issue, or issues, being refunded, and except that the first amortized principal payment shall mature and be payable not more than five (5) years from and after the date of said refunding bonds. The provisions of Sections 33-1108, 33-1109, 33-1110, 33-1111, 33-1115, 33-1117, 33-1118

and 33-1120 [, Idaho Code,] shall be applicable to refunding bonds. [1965, ch. 224, § 2, p. 512.]

STATUTORY NOTES

Compiler's Notes. — Section 33-1110, referred to in this section, was repealed by S.L. 1977, ch. 164, § 2.

33-1123. Authorization. — Refunding bonds shall be authorized by a resolution of the board of trustees fixing the date, denominations, rate of interest, the maturity dates, the last of which shall not exceed the term of the outstanding bonds to be refunded, and place or places of payment, within or without the state of Idaho. The resolution shall also provide for an annual levy, upon all the property which could be levied upon to retire the outstanding bonds to be refunded, of a tax sufficient to pay the interest and principal payments according to the plan of amortization, and shall further provide for notice, or notices, of redemption of the outstanding bonds at the time and in the manner and form prescribed by law. [1965, ch. 224, § 3, p. 512; am. 2005, ch. 392, § 2, p. 1317.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2005, ch. 392 declared an emergency. Approved April 14, 2005.

33-1124. Resolution not to be amended or repealed. — After refunding bonds are issued pursuant to this act, the resolution prescribed herein shall not be amended or repealed until the refunding bonds so authorized shall have been fully paid. [1965, ch. 224, § 4, p. 512.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" and "herein", in this section, refer to S.L. 1965, ch. 224, §§ 1-5, which are compiled as §§ 33-1121 — 33-1125.

33-1125. Application of bond proceeds — Limitations. — (1) The proceeds derived from the issuance of any refunding bonds under the provisions of this act shall either be immediately applied to the payment, redemption or retirement of the bonds to be refunded and the cost and expense incident to such procedures, or shall immediately be placed in escrow to be applied to the payment of said bonds upon their presentation and the costs and expenses incident to such proceedings and for no other purpose or purposes whatsoever until the bonds being refunded have been paid in full and discharged, and all accrued interest thereon has also been paid in full, upon which occurrences the escrow shall terminate, and any funds remaining therein shall be returned to the district.

(2) Any escrowed proceeds, pending such use, may be invested or, if necessary, reinvested only in direct obligations of the United States of America, maturing at such times as to insure the prompt payment of the

bonds refunded under the provisions of this act, and the interest accruing thereon.

(3) Such escrowed proceeds and investments, together with any interest to be derived from such investments shall be in an amount which at all times shall be sufficient to pay the bonds refunded as they are called for redemption and payment on prior redemption dates, as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom.

(4) Proceeds from the sale of refunding bonds shall be escrowed, and escrow agreement entered into, only with a commercial bank having full trust powers located within the state of Idaho and which is a member of the federal reserve system and of the federal deposit insurance corporation.

(5) The issuance of refunding bonds by any school district for the purposes and in the manner authorized by this act shall not be interpreted or deemed to be the creation of an indebtedness; and the proceeds as are or shall be escrowed at any time shall not be included in determining the limitation of bonded debt of the school district.

(6) No bonds may be refunded under the provisions of this act unless said bonds are callable for redemption prior to their maturity under their terms within ten (10) years from the date of issuance of the refunding bonds, and provisions shall be made for paying, or redeeming, and discharging all of the bonds refunded within said period. [1965, ch. 224, § 5, p. 512.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," see Compiler's Notes, § 33-1124.

Effective Dates. — Section 6 of S.L. 1965,

ch. 224 declared an emergency. Approved March 26, 1965.

CHAPTER 12

TEACHERS

SECTION.

- 33-1201. Certificate required.
- 33-1202. Eligibility for certificate.
- 33-1203. Accredited teacher training requirements.
- 33-1204. Validity, duration, renewal and lapse of certificates.
- 33-1205. Certificate records and fees.
- 33-1206. Validity of existing certificates.
- 33-1207. Endorsement and registration of certificates.
- 33-1207A. Teacher preparation.
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SECTION.

- 33-1210. [Repealed.]
- 33-1211. Privileged communication or publication.
- 33-1212. Elementary school counselors.
- 33-1212A. [Amended and Redesignated.]
- 33-1213. Technology proficiency. [Effective until July 1, 2009.]
- 33-1214, 33-1215. [Repealed.]
- 33-1216. Sick and other leave.
- 33-1217. Accumulation of unused sick leave — Transfer — Sick leave when districts divide or consolidate.
- 33-1217A. [Repealed.]
- 33-1218. Sick leave in excess of statutory minimum amounts — Proof of illness.
- 33-1219. [Repealed.]
- 33-1220. In-service training — Halting service increments.
- 33-1221. Sales of services or merchandise limited.

SECTION.

- 33-1222. Freedom from abuse.
 33-1223. [Repealed.]
 33-1224. Powers and duties of teachers.
 33-1225. Threats of violence — Limitation on liability.
 33-1226, 33-1227. [Repealed.]
 33-1228. Severance allowance at retirement.
 33-1229 — 33-1250. [Reserved.]
 33-1251. Professional standards — Title of act.
 33-1252. Professional standards commission — Members — Appointment — Terms.
 33-1253. Chairman and vice-chairman — Secretary — Rule making.
 33-1254. Professional codes and standards — Adoption — Publication.
 33-1255 — 33-1257. [Repealed.]

SECTION.

- 33-1258. Recommendations to improve professional standard.
 33-1259 — 33-1270. [Reserved.]
 33-1271. School districts — Professional employees — Negotiation agreements.
 33-1272. Definitions.
 33-1273. School districts — Professional employees — Negotiations.
 33-1274. Appointment of mediators — Compensation.
 33-1275. Fact-finders — Appointment — Hearings.
 33-1276. Intent of act.
 33-1277, 33-1278. [Reserved.]
 33-1279. Released time for service on state committees and commission.
 33-1280. American Indian languages teaching authorization.

33-1201. Certificate required. — Every person who is employed to serve in any elementary or secondary school in the capacity of teacher, supervisor, administrator, education specialist, school nurse or school librarian shall be required to have and to hold a certificate issued under authority of the state board of education, valid for the service being rendered; except that the state board of education may authorize endorsement for use in Idaho, for not more than five (5) years, certificates valid in other states when the qualifications therefor are not lower than those required for an Idaho certificate.

No certificate shall be required of a student attending any teacher-training institution, who shall serve as a practice teacher in a classroom under the supervision of a certificated teacher, and who is jointly assigned by such teacher-training institution and the governing board of a district or a public institution to perform practice teaching in a non-salaried status. Those students attending a teacher-training institution of another state and who serve as a non-salaried practice teacher in an Idaho school district shall be registered by that school district.

A student, while serving in a practicum, internship or student teaching position under the supervision of a person certificated pursuant to this section, shall be accorded the same liability insurance coverage by the school district being served as that accorded such certificated person in the same district, and shall comply with all rules and regulations of the school district or public institution while serving in such a capacity. [1963, ch. 13, § 143, p. 27; am. 1975, ch. 45, § 1, p. 84; am. 1985, ch. 107, § 12, p. 191; am. 1990, ch. 35, § 1, p. 53.]

STATUTORY NOTES

Cross References. — Professional personnel, § 33-513.

JUDICIAL DECISIONS

Cited in: *Zattiero v. Homedale Sch. Dist.*
No. 370, 137 Idaho 568, 51 P.3d 382 (2002).

RESEARCH REFERENCES

A.L.R. — Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 A.L.R.3d 19.

33-1202. Eligibility for certificate. — Each applicant for a certificate must:

1. Have attained the age of eighteen (18) years;
2. Have completed specific minimum requirements in college training as specified in rules of the state board of education;
3. Be free from contagious disease; but if at any time there is probable cause to believe that any such employee of the district is so afflicted, the board shall cause examination to be made by a licensed physician, and may exclude the employee from service without loss of pay pending determination whether so afflicted.
4. Have on file with the state department of education the results of a criminal history check pursuant to section 33-130, Idaho Code. If an applicant is found to have been convicted of any of the felony crimes enumerated in section 33-1208, Idaho Code, a certificate shall not be issued to the applicant.

The state board of education may refuse to issue or authorize a certificate to any applicant for such reason as would have constituted grounds for revoking a certificate. [1963, ch. 13, § 144, p. 27; am. 1992, ch. 98, § 1, p. 313; am. 1996, ch. 375, § 3, p. 1273.]

STATUTORY NOTES

Cross References. — Grounds for revocation of certificate, § 33-1208.

33-1203. Accredited teacher training requirements. — Except in the limited fields of trades and industries, and specialists certificates of school librarians and school nurses, the state board shall not authorize the issuance of any standard certificate premised upon less than four (4) years of accredited college training, including such professional training as the state board may require; but in emergencies, which must be declared, the state board may authorize the issuance of provisional certificates based on not less than two (2) years of college training. [1963, ch. 13, § 145, p. 27.]

33-1204. Validity, duration, renewal and lapse of certificates. — The state board of education shall by rule provide for the validity, duration, renewal and lapse of certificates.

If the holder of a certificate who has undergone a criminal history check pursuant to district policy as provided in subsection (15) of section 33-512, Idaho Code, is found to have been convicted of any felony crime enumerated

in section 33-1208, Idaho Code, the certificate shall be revoked or suspended as provided in this chapter. [1963, ch. 13, § 146, p. 27; am. 1984, ch. 70, § 1, p. 132; am. 1988, ch. 118, § 1, p. 217; am. 1996, ch. 375, § 4, p. 1273; am. 1998, ch. 88, § 6, p. 298; am. 2006, ch. 244, § 7, p. 740.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 244, updated the subsection reference in the last paragraph.

33-1205. Certificate records and fees. — (1) The state board of education shall cause to be maintained a record of all certificates issued, showing names, dates of issue and renewal, and if revoked, the date thereof and the reason therefor. A nonrefundable fee shall accompany each application for a prekindergarten through grade twelve (12) certificate, alternate certificate, change in certificate or replacement as follows:

- (a) Original certificate, all types, issued for five (5) years\$ 75.00
 - (b) Renewal certificate, all types, issued for five (5) years \$ 75.00
 - (c) Alternate route certificate, all types, issued for one
 - (1) year \$100.00
 - (d) Additions or changes during the life of an existing certificate .. \$ 25.00
 - (e) To replace an existing certificate \$ 10.00
- (2) The fees specified in subsection (1) of this section shall be in effect through December 31, 2004. On and after January 1, 2005, certificate and related fees shall be as specified by rule of the state board of education.
- (3) The fees shall be used by the professional standards commission for payment of the reasonable expenses in performing its duties and responsibilities as approved by the state board of education and not more than thirty-three percent (33%) of the fees may be used by the state department of education to partially defray the cost of the office of certification. [1963, ch. 13, § 147, p. 27; am. 1969, ch. 259, § 1, p. 798; am. 1972, ch. 239, § 1, p. 626; am. 1974, ch. 79, § 1, p. 1166; am. 1981, ch. 44, § 1, p. 66; am. 1983, ch. 80, § 1, p. 167; am. 1987, ch. 255, § 1, p. 518; am. 2003, ch. 143, § 1, p. 416.]

STATUTORY NOTES

Cross References. — Register of qualified teachers, § 33-115.

Effective Dates. — Section 2 of S.L. 1987, ch. 255 declared an emergency. Approved April 1, 1987.

Section 2 of S.L. 2003, ch. 143 declared an emergency. Approved March 27, 2003.

33-1206. Validity of existing certificates. — All certificates valid for use in Idaho on the 31st day of August, 1947, and not subsequently lapsed or revoked, shall in all respects remain valid under the laws and regulations and upon the conditions applicable thereto when first issued.

Nothing herein contained shall abridge the rights inuring to the holder of any valid certificate, issued after the 31st day of August, 1947, as the same exist at the time of the enactment of this act, subject to the right of the state board of education to adopt or amend any regulation pertaining to condi-

tions upon which certificates may be used or renewed. [1963, ch. 13, § 148, p. 27.]

STATUTORY NOTES

Compiler's Notes. — The phrase "at the time of the enactment of this act" refers to the enactment of S.L. 1963, Chapter 13, which was approved on February 15, 1963, and became effective July 1, 1963.

33-1207. Endorsement and registration of certificates. — The board of trustees of each school district shall cause the certificates of each holder thereof to be endorsed (a) prior to beginning service for the first time with the district, or (b) in the first year after a new or renewed certificate is issued, showing the date of service thereunder; and shall cause to be maintained a continuing record of certificates, by style and number, of each certificated employee of the district. [1963, ch. 13, § 149, p. 27; am. 1971, ch. 15, § 1, p. 28.]

33-1207A. Teacher preparation. — (1) Higher Education Institutions. The state board shall review teacher preparation programs at the institutions of higher education under their supervision and shall assure that the course offerings and graduation requirements are consistent with the state board approved, research based "Idaho Comprehensive Literacy Plan." To assure the most immediate compliance with this requirement, the board may allocate funds, subject to appropriation, to institutions which require revision of the program.

The state board shall be responsible for the development of a single preservice assessment measure for all kindergarten through grade eight (8) teacher preparation programs. The assessment must include a demonstration of teaching skills and knowledge congruent with current research on best reading practices. In addition the assessment must include how children acquire language; the basic sound structure of English, including phonological and phonemic awareness; phonics and structural analysis; semantics and syntactics; how to select reading textbooks; and how to use diagnostic tools and test data to improve teaching. It shall also include the preservice teacher's knowledge base of reading process: phonological awareness; sound-symbol correspondence (intensive, systematic phonemes); semantics (meaning); syntax (grammar and language patterns); pragmatics (background knowledge and life experience); and comprehension and critical thinking. By September 2002, all K-8 teacher candidates from an Idaho teacher preparation program shall pass this assessment in order to qualify for an Idaho standard elementary teaching certificate. The state board shall report the number of preservice teachers taking and passing the performance-based reading assessment to the legislature and governor annually. All costs associated with administration of this test shall be borne by the institution which administers the test and shall be shown as a line item in the appropriation request of the institution for state reimbursement.

(2) In-service Programs. Each teacher employed in a classroom for kindergarten through grade eight (8), Title I, or special education and each

school administrator of a school which includes kindergarten through grade eight (8), Title I, or special education shall complete three (3) credits (or forty-five (45) contact hours of in-service training) of a state approved reading instruction course titled "Idaho Comprehensive Literacy Course" based on the state approved research based "Idaho Comprehensive Literacy Plan" in order to recertify. Courses which qualify for credit shall be approved by the state department of education, and any educator who completes a state approved reading instruction course prior to September 2001, shall be deemed to have met the requirements of this subsection. Completion of a state approved reading instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The department shall provide a waiver of this requirement if the applicant successfully completes the reading assessment measure developed for preservice purposes as provided in subsection (1) of this section. The department shall establish a procedure to allow a waiver of this requirement if the applicant teaches in a secondary grade subject which does not directly involve teaching reading or writing.

The board of trustees of every school district shall include in its plan for in-service training, coursework covering reading skills development, including diagnostic tools to review and adjust instruction continuously, and the ability to identify students who need special help in reading. The district plan for in-service training in reading skills shall be submitted to the state department of education for review and approval, in a format specified by the department. [I.C., § 33-1207A, as added by 1999, ch. 362, § 1, p. 957; am. 2000, ch. 269, § 1, p. 769; am. 2002, ch. 71, § 1, p. 156.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2000, ch. 269 declared an emergency. Approved April 12, 2000.

33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds. — 1. The state board of education may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

- a. Gross neglect of duty;
- b. Incompetency;
- c. Breach of the teaching contract;
- d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;
- e. Revocation, suspension, denial or surrender of a certificate in another state for any reason constituting grounds for revocation in this state;
- f. Conviction, finding of guilt, withheld judgment or suspended sentence, in this or any other state of a crime involving moral turpitude;
- g. Conviction, finding of guilt, withheld judgment, or suspended sentence in this state or any other state for the delivery, manufacture or production

of controlled substances or simulated controlled substances as those terms are defined in section 37-2701, Idaho Code;

h. A guilty plea or a finding of guilt, notwithstanding the form of the judgment or withheld judgment in this or any other state, of the crime of involuntary manslaughter, section 18-4006 2. or section 18-4006 3., Idaho Code;

i. Any disqualification which would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known at the time of its issuance or authorization;

j. Willful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

k. The kidnapping of a child, section 18-4503, Idaho Code;

l. Conviction, finding of guilt, withheld judgment, or suspended sentence, in this state or any other state of any felony, the commission of which renders the certificated person unfit to teach or otherwise perform the duties of the certificated person's position.

2. The state board of education shall permanently revoke any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, and shall deny the application for issuance of a certificate of a person who pleads guilty to or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child:

a. The aggravated assault of a child, section 18-905, Idaho Code, or the assault with intent to commit a serious felony against a child, section 18-909, Idaho Code.

b. The aggravated battery of a child, section 18-907, Idaho Code, or the battery with intent to commit a serious felony against a child, section 18-911, Idaho Code.

c. The injury or death of a child, section 18-1501, Idaho Code.

d. The sexual abuse of a child under sixteen (16) years of age, section 18-1506, Idaho Code.

e. The ritualized abuse of a child under eighteen (18) years of age, section 18-1506A, Idaho Code.

f. The sexual exploitation of a child, section 18-1507, Idaho Code.

g. Possession of photographic representations of sexual conduct involving a child, section 18-1507A, Idaho Code.

h. Lewd conduct with a child under the age of sixteen (16) years, section 18-1508, Idaho Code.

i. The sexual battery of a minor child sixteen (16) or seventeen (17) years of age, section 18-1508A, Idaho Code.

j. The sale or barter of a child for adoption or other purposes, section 18-1511, Idaho Code.

k. The murder of a child, section 18-4003, Idaho Code, or the voluntary manslaughter of a child, section 18-4006 1., Idaho Code.

l. The kidnapping of a child, section 18-4502, Idaho Code.

m. The importation or exportation of a juvenile for immoral purposes, section 18-5601, Idaho Code.

n. The abduction of a person under eighteen (18) years of age for prostitution, section 18-5610, Idaho Code.

o. The rape of a child, section 18-6101 or 18-6108, Idaho Code.

The general classes of felonies listed in subsection 2. of this section shall include equivalent laws of federal or other state jurisdictions. For the purpose of this subsection, "child" means a minor or juvenile as defined by the applicable state or federal law.

3. The state board of education may investigate and follow the procedures set forth in section 33-1209, Idaho Code, for any allegation of inappropriate conduct as defined in this section, by a holder of a certificate whether or not the holder has surrendered his certificate without a hearing or failed to renew his certificate. In those cases where the holder of a certificate has surrendered or failed to renew his certificate and it was found that inappropriate conduct occurred, the board shall record such findings in the permanent record of the individual and shall deny the issuance of a teaching certificate.

4. Any person whose certificate may be or has been revoked, suspended or denied under the provisions of this section shall be afforded a hearing according to the provisions of section 33-1209, Idaho Code.

5. The state board may deny the issuance of a certificate for any reason that would be a ground for revocation or suspension. [1963, ch. 13, § 150, p. 27; am. 1969, ch. 258, § 9, p. 794; am. 1978, ch. 180, § 1, p. 411; am. 1984, ch. 150, § 1, p. 353; am. 1987, ch. 229, § 1, p. 485; am. 1992, ch. 223, § 1, p. 672; am. 1993, ch. 111, § 1, p. 281; am. 2004, ch. 222, § 1, p. 662.]

STATUTORY NOTES

Compiler's Notes. — Section 18-5610, referred to in subdivision 2.n., was repealed by S.L. 1994, ch. 130, § 10.

1969, ch. 258 provided that this act should be in full force and effect on and after July 1, 1969.

Effective Dates. — Section 10 of S. L.

JUDICIAL DECISIONS

Cited in: *Kolp v. Board of Trustees*, 102 Idaho 320, 629 P.2d 1153 (1981).

RESEARCH REFERENCES

A.L.R. — Use of illegal drugs as ground for dismissal of teacher, or denial or cancelation of teacher's certificate. 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 A.L.R.3d 19.

33-1208A. Reporting requirements and immunity. — The board of trustees of a school district, through its designee, shall, within ten (10) days of the date the employment is severed, report to the chief officer of teacher certification the circumstances and the name of any educator who is dismissed, resigns or is otherwise severed from employment for reasons that could constitute grounds for revocation, suspension or denial of a certificate.

Any person providing a report under the provisions of this section shall have immunity from any liability, civil or criminal, that may otherwise be incurred or imposed. Any such person shall have the same immunity with respect to participation in any administrative or judicial proceeding result-

ing from such report. Any person who reports in bad faith or with malice shall not be protected by the provisions of this section. [I.C., § 33-1208A, as added by 1992, ch. 223, § 2, p. 672.]

33-1209. Proceedings to revoke, suspend, deny or place reasonable conditions on a certificate — Letters of reprimand — Complaint — Subpoena power — Hearing. — (1) The professional standards commission may conduct investigations on any signed allegation of unethical practice of any teacher brought by:

- (a) An individual with a substantial interest in the matter, except a student in an Idaho public school; or
- (b) A local board of trustees.

The allegation shall state the specific ground or grounds for revocation, suspension, placing reasonable conditions on the certificate, or issuance of a letter of reprimand. The executive committee of the professional standards commission shall review the circumstances of the case and determine whether probable cause exists to warrant the filing of a complaint and the requesting of a hearing.

(2) Proceedings to revoke or suspend any certificate issued under section 33-1201, Idaho Code, or to issue a letter of reprimand or place reasonable conditions on the certificate shall be commenced by a written complaint against the holder thereof. Such complaint shall be made by the chief certification officer stating the ground or grounds for issuing a letter of reprimand, placing reasonable conditions on the certificate, or for revocation or suspension and proposing that a letter of reprimand be issued, reasonable conditions be placed on the certificate, or the certificate be revoked or suspended. A copy of the complaint shall be served upon the certificate holder, either by personal service or by certified mail.

(3) Not more than thirty (30) days after the date of service of any complaint, the person complained against may request, in writing, a hearing upon the complaint. Any such request shall be made and addressed to the state superintendent of public instruction; and if no request for hearing is made, the grounds for suspension, revocation, placing reasonable conditions on the certificate, or issuing a letter of reprimand stated in the complaint shall be deemed admitted. Upon a request for hearing, the chief certification officer, shall give notice, in writing, to the person requesting the hearing, which notice shall state the time and place of the hearing. The time of such hearing shall not be less than five (5) days from the date of notice thereof. Any such hearing shall be informal and shall conform with chapter 52, title 67, Idaho Code. The hearing will be held within the school district in which any teacher complained of shall teach, or at such other place deemed most convenient for all parties.

(4) Any such hearing shall be conducted by three (3) or more panel members appointed by the chairman of the professional standards commission, a majority of whom shall hold a position of employment the same as the person complained against. One (1) of the panel members shall serve as the panel chair. The panel chair shall be selected by the chairman of the professional standards commission from a list of former members of the

professional standards commission who shall be instructed in conducting administrative hearings. No commission member who participated in the probable cause determination process in a given case shall serve on the hearing panel. All hearings shall be held with the object of ascertaining the truth. Any person complained against may appear in person and may be represented by legal counsel, and may produce, examine and cross-examine witnesses, and, if he chooses to do so, may submit for the consideration of the hearing panel a statement, in writing, in lieu of oral testimony, but any such statement shall be under oath and the affiant shall be subject to cross-examination.

(5) The state superintendent of public instruction, as authorized by the state board of education, has the power to issue subpoenas and compel the attendance of witnesses and compel the production of pertinent papers, books, documents, records, accounts and testimony. The state board or its authorized representative may, if a witness refuses to attend or testify or to produce any papers required by such subpoena, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that a due notice has been given of the time and place of attendance of the witnesses, or the production of the papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or its representative, or has refused to answer questions propounded to him in the course of the proceedings, and ask for an order of the court compelling the witness to attend and testify and produce the papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in the order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced the papers before the board or its representative. A copy of the order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued by the board and regularly served, the court shall thereupon order that the witness appear before the board at the time and place fixed in the order and testify or produce the required papers. Upon failure to obey the order, the witness shall be dealt with for contempt of court. The subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

(6) At the conclusion of any hearing dealing with the revocation, suspension, denial of a certificate, placing reasonable conditions on the certificate, or issuing a letter of reprimand, the hearing panel shall submit to the chief certification officer, a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with the findings of fact and a decision. The hearing panel may determine to suspend or revoke the certificate, or the panel may order that reasonable conditions be placed on the certificate or a letter of reprimand be sent to the certificate holder, or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

(7) The hearing panel's decision shall be given to the person complained against and a copy of the panel's decision shall be made a permanent part of the record of the certificate holder.

(8) The final decision of the professional standards commission shall be subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code, in the district court of the county in which the holder of a revoked certificate has been last employed as a teacher.

(9) Whenever any certificate has been revoked, suspended or has had reasonable conditions placed upon it, or an application has been denied, the professional standards commission may, upon a clear showing that the cause constituting grounds for the listed actions no longer exists, issue a valid certificate. Provided however, that no certificate shall be issued to any person who has been convicted of any crime listed in subsection 2. of section 33-1208, Idaho Code. [I.C., § 33-1209, as added by 1989, ch. 122, § 2, p. 269; am. 1992, ch. 159, § 1, p. 514; am. 1993, ch. 216, § 16, p. 587; am. 1995, ch. 235, § 1, p. 794; am. 2004, ch. 221, § 1, p. 659.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.
Writ of review, § 7-201 et seq.

Prior Laws. — Former § 33-1209, which

comprised 1963, ch. 13, § 151, p. 27; am. 1984, ch. 150, § 2, p. 353, was repealed by S.L. 1989, ch. 122, § 1.

JUDICIAL DECISIONS

Failure to Review Record.

Where the transcript of the state board of education (SBE) meeting indicated that some of the SBE members had not reviewed all of the record submitted to SBE by the panel as

required under this section, this failure to review violated the teacher's statutory rights. *Macrae v. Smith*, 126 Idaho 788, 890 P.2d 739 (1995).

33-1210. Suspension of certificate. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1963, ch. 13, § 152, p. 27, was repealed by S.L. 1978, ch. 180, § 2.

33-1211. Privileged communication or publication. — Any publication or communication made by any member of the state board of education, or by any person delegated by the said state board to hold or conduct any hearing, or by any certification officer of the state board of education, in the proper discharge of any official duty imposed under sections 33-1208, 33-1209, or 33-1210, Idaho Code, shall be subject to disclosure according to chapter 3, title 9, Idaho Code. [1963, ch. 13, § 153, p. 27; am. 1990, ch. 213, § 29, p. 480.]

STATUTORY NOTES

Compiler's Notes. — Section 33-1210, referred to in this section, was repealed by S.L. 1978, ch. 180, § 2.

Effective Dates. — Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45

and 48 through 110 of the act should become effective July 1, 1993 and that §§ 1, 2, 46 and 47 should become effective on July 1, 1990.

RESEARCH REFERENCES

A.L.R. — Actionability of statements imputing inefficiency or lack of qualification to public school teacher. 40 A.L.R.3d 490.

33-1212. Elementary school counselors. — In recognition of the diverse and complicated demands upon students, their families and the public school system, the legislature finds that the counseling offered at the elementary school level should be flexible and responsive. For purposes of elementary counselor services, a counselor shall be defined as an individual who meets the requirements of an approved program of graduate study in school guidance and counseling from a college or university approved by the Idaho state board of education and who meets the requirements of rules adopted by the board, or an individual licensed as provided by chapter 32, title 54, Idaho Code, as a certified social worker and who meets the requirements of the state board of education.

The state board of education shall adopt rules to implement the provisions of this section, and shall specifically provide that certified social workers meet the requirement for elementary school counselors. A local school district may request a waiver from the state board of education of the counselor/counseling requirements, provided that data is submitted to and annually approved by the state department of education to substantiate that the intent of the board's rules in these areas is being met by an alternative program model. [I.C., § 33-1212, as added by 1994, ch. 443, § 1, p. 1424; am. 1998, ch. 88, § 7, p. 298.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-1212 was amended and redesignated as § 33-515 by § 10 of S.L. 1984, ch. 286.

33-1212A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — This section was amended and redesignated as § 33-516 by § 11 of S.L. 1984, ch. 286.

33-1213. Technology proficiency. [Effective until July 1, 2009.] — The state board of education shall, by rule, provide technology proficiency standards to apply to certificated educators in Idaho.

The rules shall provide a process to request a waiver from the requirement, upon application for recertification, as provided in this section. A letter of appeal shall be submitted to the department describing the circumstances whereby meeting the technology requirement is not applica-

ble. The letter shall be signed by the superintendent and chair of the board of trustees of the district which employs the individual. If the superintendent or the chair of the board of trustees, or both, refuse to sign the letter of appeal, the individual may apply directly to the board of trustees of the district for approval of the letter of appeal. If this application is disapproved, the individual may apply to the state department without the endorsement of the employing district.

A decision by the department not to grant a waiver may be appealed to the state board of education.

Each decision on the waiver letter or application shall be determined on the basis of the relevance of the technology requirements and tests to the requirements of the individual's core subjects taught, teaching assignment and the individual's ability to utilize the necessary technology for such tasks as recording grades and attendance. Provided however, that an educator may never be granted more than one (1) waiver pursuant to the provisions of this section, nor may any waiver granted extend beyond five (5) years. [I.C., § 33-1213, as added by 2004, ch. 372, § 1, p. 1113.]

STATUTORY NOTES

Prior Laws. — Former § 33-1213, which comprised 1963, ch. 13, § 155, p. 27; am. 1973, ch. 126, § 4, p. 238; am. 1978, ch. 340, § 1, p. 874; am. 1983, ch. 83, § 3, p. 169, was repealed by S.L. 1984, ch. 286, § 12.

Effective Dates. — Section 2 of S.L. 2004, ch. 372 provided: "Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2009."

33-1214, 33-1215. Release from contract — Termination of employment or salary reduction. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised 1963, ch. 13, §§ 156, 157, p. 27; am. 1973, ch. 126, §§ 5, 6, p. 238; am. 1978, ch. 340, § 2, p. 874; am. 1983, ch. 83, § 4, p. 169, were repealed by S.L. 1984, ch. 286, § 12.

33-1216. Sick and other leave. — (a) At the beginning of each new employment year and thereafter as necessary during the employment year, each noncertificated employee of any school district, including charter districts, who regularly works twenty (20) hours or more per week or certificated employee who works half time or more per week for a school district, including charter districts, shall be entitled to sick leave with full pay of one (1) day, as projected for the employment year for each month of service in which they work a majority portion of that month, subject to the limitations provided by this chapter. Sick leave for noncertificated employees shall be calculated proportionate to the average hours worked per day. Sick leave for certificated employees shall be calculated by the day, or percentage thereof, as defined in their individual employment contracts. The local board of trustees shall not provide compensation for unused sick leave. This shall not prohibit the local board of trustees from establishing a policy providing retirement severance pay.

(b) The board of trustees may require proof of illness adequate to protect the district against malingering and false claims of illness. Any accumulated sick leave earned prior to July 1, 1976, shall be used before the use of any accumulated sick leave earned subsequent to July 1, 1976.

Each local board of trustees may establish a policy governing leave for certificated and noncertificated employees in the case of illness or death of members of the families of such employees, for professional conferences and workshops, and for such other purposes as the board may determine.

(c) Each local board of trustees may establish a policy governing leave for certificated and noncertificated employees in the case of absence during a period for which the employee is paid by worker's compensation. In addition the board may supplement the worker's compensation payment by an amount not to exceed an amount which when combined with the worker's compensation payment would be equal to the amount the employee would have been paid if he had not been injured. Supplementation may come from accrued vacation leave, compensatory time or sick leave time as may be provided in the policy of the district. Time for which a person is paid worker's compensation shall not be allowed as straight sick leave which would result in duplicate compensation.

(d) The board of trustees of any school district, including any specially chartered district, may also grant a leave of absence to any certificated employee of such district for service to a professional educational organization of which such certificated employee is a member and has been elected to hold the office of president therein, such leave to be for a period not exceeding one (1) year. During the period of any such leave of absence the said certificated employee shall receive the same compensation and receive or accrue such other rights and benefits that he would have been entitled to or have received or accrued had he been present and working for the school district, and he shall remain an active member of the public employee retirement system of Idaho; provided that such professional educational organization shall first pay to the said school district an amount equal to any and all compensation, contributions to the public employee retirement system of Idaho and any other amounts paid to or accrued in the name of said employee during such period. [1963, ch. 13, § 158, p. 27; am. 1972, ch. 120, § 1, p. 238; am. 1973, ch. 37, § 1, p. 71; am. 1974, ch. 112, § 1, p. 1278; am. 1976, ch. 226, § 1, p. 810; am. 1977, ch. 138, § 1, p. 298; am. 1979, ch. 129, § 1, p. 399; am. 2004, ch. 253, § 1, p. 724; am. 2005, ch. 377, § 1, p. 1216.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1972, ch. 120 provided the act should take effect on and after July 1, 1972.

JUDICIAL DECISIONS

Sick Leave.

Subsection (a) of this section grants sick leave benefits to all school district employees,

including part-time school bus drivers. *Porter v. Bd. of Trs.*, 141 Idaho 11, 105 P.3d 671 (2004) (see 2005 amendment).

RESEARCH REFERENCES

A.L.R. — Mandatory maternity leave rules or policies for public school teachers as constituting violation of equal protection clause of Fourteenth Amendment to Federal Consti-

tution. 17 A.L.R. Fed. 768.

Who is eligible employee under § 101(2) of family and medical leave act (29 U.S.C.A. § 2611(2)). 166 A.L.R. Fed. 569.

33-1217. Accumulation of unused sick leave — Transfer — Sick leave when districts divide or consolidate. — Unused sick leave shall be accumulated from year to year as long as an employee remains continuously in the service of the same school district, including charter districts, to ninety (90) days accumulation of leave. Termination of employment in any district shall terminate sick leave rights, both current and accumulated, except when such employee is employed by another district or another state educational agency during the school year immediately following the year of termination; and the accumulated leave up to a maximum of ninety (90) days shall be secured for, and credited to, the employee by the district or state educational agency thereafter employing such employee. Whenever new school districts are formed by the consolidation or by the division of existing districts, the accumulated sick leave of school district employees who continue in service in the new district or districts created by such consolidation or division shall have such accumulated sick leave secured for, and credited to, them in such newly created district, or districts. [1963, ch. 13, § 158A, p. 27; am. 1965, ch. 148, § 1, p. 287; am. 1971, ch. 33, § 1, p. 77; am. 1974, ch. 112, § 2, p. 1278.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1965, ch. 148 provided that this act should take effect from and after July 1, 1965.

Section 3 of S.L. 1971, ch. 33 provided that this act should be in full force and effect on and after July 1, 1971.

JUDICIAL DECISIONS

Cited in: Porter v. Bd. of Trs., 141 Idaho 11, 105 P.3d 671 (2004).

33-1217A. Providing for the use of sick leave. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-1217A, as added by

1971, ch. 33, § 2, p. 77, was repealed by S.L. 1974, ch. 112, § 3.

33-1218. Sick leave in excess of statutory minimum amounts — Proof of illness. — The board of trustees may fix and establish for the district a period of annual sick leave and accumulation of sick leave in excess of the amounts provided herein, in sections 33-1216 and 33-1217, Idaho Code, not discriminatory between employees, and as in its discretion may appear necessary, and may require proof of illness in accordance with section 33-1216, Idaho Code.

The state board of education may provide uniform regulations for proof of illness, including forms for submission of proof, and when so provided, its regulations shall supersede the regulations of the district in this regard. [1963, ch. 13, § 158B, p. 27; am. 1974, ch. 112, § 4, p. 1278.]

33-1219. Minimum salary schedule. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1963, ch. 13, § 159, p. 27, was repealed by S.L. 1980, ch. 33, § 1.

33-1220. In-service training — Halting service increments. — The board of trustees of any school district may establish for the district, uniform requirements for in-service training of certificated personnel; and the board may upon notice halt teaching service increments otherwise due any such employee upon neglect or failure to fulfill such requirement, until said requirement shall have been met. [1963, ch. 13, § 160, p. 27.]

33-1221. Sales of services or merchandise limited. — No person employed by any public school district shall, either as a principal or as an agent, sell or offer to sell to pupils attending school in the district, or to a parent or guardian of any such pupil, any services or merchandise to be used, or intended to be used, in the schools in connection with activities or studies therein, except under such rules and regulations which shall be adopted by the board of trustees of the district employing such person.

Nothing herein shall limit a board of trustees from purchasing books, supplies or other equipment which may be sold to pupils attending any school in the district. [1963, ch. 13, § 161, p. 27.]

STATUTORY NOTES

Cross References. — Contracts of trustees with district prohibited, § 33-507.

33-1222. Freedom from abuse. — Certificated employees of every school district shall be free from abuse by parents or other adults, as provided in section 18-916, Idaho Code. [1963, ch. 13, § 162, p. 27; am. 1981, ch. 139, § 1, p. 242.]

33-1223. Exemption from jury duty. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1963, ch. 13, § 163, p. 27, was repealed by S.L. 1972, ch. 12, § 1.

33-1224. Powers and duties of teachers. — In the absence of any statute or rule or regulation of the board of trustees, any teacher employed

by a school district shall have the right to direct how and when each pupil shall attend to his appropriate duties, and the manner in which a pupil shall demean himself while in attendance at the school. It is the duty of a teacher to carry out the rules and regulations of the board of trustees in controlling and maintaining discipline, and a teacher shall have the power to adopt any reasonable rule or regulation to control and maintain discipline in, and otherwise govern, the classroom, not inconsistent with any statute or rule or regulation of the board of trustees. [1963, ch. 13, § 164, p. 27.]

STATUTORY NOTES

Cross References. — Alcohol, effects of, instruction, § 33-1605.

American flag, instruction in proper use, § 33-1602.

Constitution, instruction in, § 33-1602.

English language, instruction in, § 33-1601.

Health and physical fitness, instruction, § 33-1605.

Narcotics, effects of, instruction, § 33-1605.

National anthem, instruction, § 33-1602.

Pledge of allegiance, instruction, § 33-1602.

Sectarian instruction forbidden, § 33-1603.

Tobacco, effects of, instruction, § 33-1605.

JUDICIAL DECISIONS

Cited in: *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

RESEARCH REFERENCES

A.L.R. — Personal liability of public school teacher in negligence action for personal injury or death of student. 34 A.L.R.4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student. 35 A.L.R.4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student. 35 A.L.R.4th 328.

33-1225. Threats of violence — Limitation on liability. — (1) A communication by any person to a school principal, or designee, or a communication by a student attending the school to the student's teacher, school counselor or school nurse, and any report of that communication to the school principal stating that a specific person has made a threat to commit violence on school grounds by use of a firearm, explosive, or deadly weapon defined in chapter 33, title 18, Idaho Code, is a communication on a matter of public concern. Such communication or report shall only be subject to liability in defamation by clear and convincing evidence that the communication or report was made with knowledge of its falsity or with reckless disregard for the truth or falsity of the communication or report. This section shall not be interpreted to change or eliminate other elements of defamation required by law.

(2) As used in this section, "school" means any public or private school providing instruction in kindergarten or any grades from grade one (1) through grade twelve (12) which is the subject of a threat. [I.C., § 33-1225, as added by 2003, ch. 263, § 1, p. 698.]

STATUTORY NOTES

Prior Laws. — Former § 33-1225, which comprised 1967, ch. 195, § 1, p. 625; am. 1971, ch. 3, § 1, p. 4; am. 1973, ch. 56, § 1, p. 90; am. 1978, ch. 175, § 1, p. 400, was re-

pealed by S.L. 1984, ch. 71, § 1.

Effective Dates. — Section 2 of S.L. 2003, ch. 263 declared an emergency. Approved April 8, 2003.

33-1226, 33-1227. School employees — Tuberculosis examinations. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised 1967, ch. 195, §§ 2, 3, p. 625; am. 1971, ch. 3, § 1, p. 4; am. 1973, ch.

56, § 1, p. 90; am. 1978, ch. 175, § 1, p. 400, were repealed by S.L. 1984, ch. 71, § 1.

33-1228. Severance allowance at retirement. — (1) Upon separation from public school employment by retirement in accordance with chapter 13, title 59, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, as provided by section 33-1218, Idaho Code, and shall be reported by the employer to the Idaho public employee retirement system. A sum equal to one-half (1/2) of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, as determined by the retirement board, shall be transferred from the sick leave account provided by subsection (2) [(3)] of this section and shall be credited to such employee's retirement account. Such sums shall be used by the retirement board to continue to pay, subject to applicable federal tax limits:

(a) Premiums for the retiree and the retiree's dependents at the rate for the active employee's group health, long-term care, vision, prescription drug and dental insurance programs as maintained by the employer for the active employees until the retiree and/or the retiree's spouse becomes eligible for medicare at which time the district shall make available a supplemental program to medicare for the eligible individual. Upon the death of the retiree the surviving spouse's health coverage shall be available and continued under the same terms and conditions as the retiree. Coverage may be continued for the retiree's surviving dependent spouse and dependents until remarriage of the spouse or until the retiree's surviving dependent spouse is eligible for a group health program by an employer. The medicare supplement program will provide the same premium and benefits for all retirees of all the employers served by the same insurance carrier. However, a school district may make available to all retirees from that district other benefits in addition to the medicare supplement program and the retiree or the district shall pay for such additional benefits.

(b) Premiums at the time of retirement for the retiree for the life insurance program maintained by the employer which may be reduced to a minimum of five thousand dollars (\$5,000) of coverage.

(2) The retiree may continue to pay the premiums for the health, accident, dental and life insurance to the extent of the funds credited to the

employee's account pursuant to this section and when these funds are expended the premiums may be deducted from the retiree's allowance. Upon a retiree's death, any unexpended sums remaining in the retiree's account shall revert to the sick leave account. If funds are not available for payment by the Idaho public employee retirement system from the retiree's surviving dependent spouse's allowance, the insurance carrier shall implement a direct billing procedure to permit the retiree's surviving spouse to continue coverage.

(3) Each employer shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in section 59-1305, Idaho Code. Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget.

(4) For purposes of this section public school employment shall be defined to permit inclusion of employees of organizations funded by school districts or of contributions of employees of school districts. [I.C., § 33-1228, as added by 1978, ch. 159, § 1, p. 347; am. 1982, ch. 206, § 1, p. 569; am. 1988, ch. 254, § 1, p. 493; am. 1990, ch. 407, § 1, p. 1133; am. 1993, ch. 398, § 1, p. 1461; am. 2006, ch. 150, § 1, p. 463; am. 2007, ch. 78, § 1, p. 205.]

STATUTORY NOTES

Cross References. — Group insurance, retirement program unaffected, § 67-5765.

Income tax deduction for certain retirement benefits, § 63-3022A.

Public employees' retirement system, § 59-1301 et seq.

Amendments. — The 2006 amendment, by ch. 150, in the introductory paragraph of subsection (1), inserted "as determined by the retirement board to continue" in the second sentence, deleted "Idaho public employees" preceding "retirement board" and added "subject to applicable federal tax limits" to the

third sentence; and substituted "long-term care, vision, prescription drug" for "accident" near the beginning of subsection (1)(a).

The 2007 amendment, by ch. 78, in subsection (3), inserted "in trust" in the first sentence, and added the second, third, and sixth sentences.

Compiler's Notes. — Following the 1989 amendment of this section, the reference to "subsection (2) of this section", in the second sentence of subsection (1), should be to "subsection (3)".

33-1229 — 33-1250. [Reserved.]

33-1251. Professional standards — Title of act. — This act shall be known and cited as the "public schools professional standards act." [1969, ch. 258, § 1, p. 794; am. 1972, ch. 239, § 2, p. 626.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" as §§ 33-1208, 33-1251 to 33-1254 and 33-1258 refer to S.L. 1969, ch. 258, which is compiled 1258.

33-1252. Professional standards commission — Members — Appointment — Terms. — A professional standards commission is hereby created in the department of education, consisting of eighteen (18) members, one (1) of whom shall be a member of the staff of the state department of education, and one (1) of whom shall be a member of the staff of the division of professional-technical education, to be appointed by the state board of education. The members shall be representative of the teaching profession of the state of Idaho, and not less than seven (7) members shall be certificated classroom teachers in the public school system of the state and shall include at least one (1) teacher of exceptional children and at least one (1) teacher in pupil personnel services. Such expansion of membership on the professional standards commission shall not require reaffirmation of the codes and standards of ethics and rules of procedure used by the professional standards commission.

Except for the member from the staff of the state department of education, and the member from the staff of the division of professional-technical education, three (3) nominees for each position on the commission shall be submitted to the state superintendent of public instruction, for the consideration of the state board of education. Any state organization of teachers whose membership is open to all certificated teachers in the state may submit nominees for positions to be held by classroom teachers; the Idaho association of school superintendents may submit nominees for one (1) position, the Idaho association of secondary school principals may submit nominees for one (1) position; the Idaho association of elementary school principals may submit nominees for one (1) position; the Idaho school boards association may submit nominees for one (1) position; the Idaho association of special education administrators may submit nominees for one (1) position; the education departments of the private colleges of the state may submit nominees for one (1) position, the community colleges and the education departments of the public institutions of higher education may submit nominees for two (2) positions, and the colleges of letters and sciences of the institutions of higher education may submit nominees for one (1) position.

The state board of education shall appoint or reappoint members of the commission for terms of three (3) years. [1969, ch. 258, § 2, p. 794; am. 1970, ch. 40, § 1, p. 87; am. 1972, ch. 239, § 3, p. 626; am. 1974, ch. 10, § 9, p. 49; am. 1974, ch. 158, § 1, p. 1392; am. 1979, ch. 11, § 1, p. 15; am. 1989, ch. 269, § 1, p. 657; am. 1999, ch. 329, § 3, p. 888; am. 2003, ch. 144, § 1, p. 417.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Effective Dates. — Section 2 of S. L. 1970,

ch. 40 provided that this act should be in full force and effect on and after July 1, 1970.

Section 21 of S. L. 1974, ch. 10 provided

that the act should be in full force and effect on and after July 1, 1974.

33-1253. Chairman and vice-chairman — Secretary — Rule making. — At the first meeting of the commission, after the appointment of its members, it shall organize itself and name from among its members a chairman and vice-chairman who shall act in the absence of the chairman; it shall also name a secretary who may or may not be a member. The commission shall from time to time adopt such rules as are necessary to the conduct of its business. [1969, ch. 258, § 3, p. 794.]

33-1254. Professional codes and standards — Adoption — Publication. — The commission shall have authority to adopt recognized professional codes and standards of ethics, conduct and professional practices which shall be applicable to teachers in the public schools of the state, and submit the same to the state board of education for its consideration and approval. Upon their approval by the state board of education, the professional codes and standards shall be published by the board. [1969, ch. 258, § 4, p. 794; am. 1991, ch. 30, § 3, p. 58.]

33-1255 — 33-1257. Hearings — Administrative and legal remedies.
[Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 296, § 1, p. 753, were repealed by S.L. 1989, which comprised 1969, ch. 258, §§ 5-7, p. 794; ch. 122, § 1. am. 1972, ch. 239, § 4, p. 626; am. 1978, ch.

33-1258. Recommendations to improve professional standard. — The Commission may make recommendations to the state board of education in such areas as teacher education, teacher certification and teaching standards, and such recommendations to the state board of education or to boards of trustees of school districts as, in its judgment, will promote improvement of professional practices and competence of the teaching profession of this state, it being the intent of this act to continually improve the quality of education in the public schools of this state. [1969, ch. 258, § 8, p. 794; am. 1972, ch. 239, § 5, p. 626.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," ch. 239 provided that the act should be in full see Compiler's Notes, § 33-1251. force and effect on and after July 1, 1972.

Effective Dates. — Section 6 of S.L. 1972,

33-1259 — 33-1270. [Reserved.]

33-1271. School districts — Professional employees — Negotiation agreements. — The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall upon its own initiative or upon

the request of a local education organization representing professional employees, enter into a negotiation agreement with the local education organization or the designated representative(s) of such organization and negotiate with such party in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization. A request for negotiations may be initiated by either party to such negotiation agreement. Accurate records or minutes of the proceedings shall be kept, and shall be available for public inspection at the offices of the board of education during normal business hours. Joint ratification of all final offers of settlement shall be made in open meetings. [1971, ch. 103, § 1, p. 223; am. 1977, ch. 309, § 1, p. 882; am. 1989, ch. 294, § 1, p. 722.]

STATUTORY NOTES

Compiler's Notes. — The letter "s" in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

ANALYSIS

Arbitration.

Cost of living provision.

Effect of agreements on contracts.

Legislative intent.

Reduction in force procedures.

Teacher strikes.

Arbitration.

A school district may be legally compelled to honor that portion of a Master Agreement between the district and a local education organization which requires the submission of grievances pertaining to the application or interpretation of the agreement to binding arbitration. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

Cost of Living Provision.

Where, in a written negotiation agreement with the teachers' bargaining unit, the board of trustees of a school district had agreed to provide a cost of living increase based upon the consumer price index each year when sound fiscal management allowed it, and the evidence showed that in a year when the consumer price index was up approximately 11%, the board offered the teachers a cost of living increase of only 7.5% even though there was more than enough money available to the board to fund a full 11% increase, the evidence clearly supported the court's finding that the board did not negotiate the cost of living adjustment in good faith as required by this section. *Gilbert v. Nampa School Dist.* No. 131, 104 Idaho 137, 657 P.2d 1 (1983).

Where the school district's board of trustees had contractual and statutory duties to nego-

tiate and to provide teachers a cost of living increase based upon the consumer price index if certain conditions were met, it was within the authority of the district court to determine whether the board complied with these duties. *Gilbert v. Nampa School Dist.* No. 131, 104 Idaho 137, 657 P.2d 1 (1983).

Although this section required a school district's board of trustees to enter into a negotiation agreement with the teachers' association, nothing in the statutes required the board to agree to the inclusion of a cost of living provision in that agreement; therefore, the board's promise to provide cost of living increases if certain economic conditions were met was not unenforceable as resulting from forced negotiations. *Gilbert v. Nampa School Dist.* No. 131, 104 Idaho 137, 657 P.2d 1 (1983).

Effect of Agreements on Contracts.

A school board, currently engaged in collective bargaining negotiations or in mediation, with the association representing its teachers, may send out binding individual contracts to teachers as required by statute, and those contracts become and are modified by applicable provisions of the agreement which thereafter results from negotiations and mediation which were timely brought and on-

going when the individual contracts were entered into. *Buhl Educ. Ass'n v. Joint School Dist. No. 412, 101 Idaho 16, 607 P.2d 1070 (1980).*

The fact that the terms of a collective bargaining agreement may not be settled and reduced to a written binding contract at the time of the proffering of individual teacher contracts is immaterial, since the school boards and teachers may offer and accept employment subject to the terms of a collective bargaining agreement yet to be agreed upon by the parties. *Buhl Educ. Ass'n v. Joint School Dist. No. 412, 101 Idaho 16, 607 P.2d 1070 (1980).*

Legislative Intent.

Nowhere has the legislature expressly prohibited a school board from agreeing to arbitrate a contract dispute as to either interpretation or procedures of implementing the contract, nor has it statutorily excluded negotiation of administration of reduction-in-force provisions. *Bear Lake Educ. Ass'n v. Board of Trustees, 116 Idaho 443, 776 P.2d 452 (1989).*

Reduction in force procedures.

The RIF (reduction in force) procedures of the Professional Agreement were not in con-

flict with any statutory provisions. The school district was acting within its express authority when it negotiated RIF procedures set forth in the Professional Agreement. *Hunting v. Clark County Sch. Dist. No. 161, 129 Idaho 634, 931 P.2d 628 (1997).*

Teacher Strikes.

This section does not inferentially grant public school teachers the right to strike even though such strikes are not expressly prohibited. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n, 98 Idaho 486, 567 P.2d 830 (1977).*

Where an education association representing public school teachers alleged that a school board had refused to abide by and engaged in the procedures for resolution of impasse situations established by this section, it was error for a trial court to enjoin a teacher strike without taking any testimony relative to the charge of bad faith on the board's part. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n, 98 Idaho 486, 567 P.2d 830 (1977).*

Cited in: *Baker v. Independent School Dist., 107 Idaho 608, 691 P.2d 1223 (1984).*

RESEARCH REFERENCES

A.L.R. — Who may be included in "unit appropriate" for collective bargaining at school or college, under § 9(b) of National

Labor Relations Act (29 USCS § 159(b)). 46 A.L.R. Fed. 580.

33-1272. Definitions. — Definition of terms as used in this act:

1. "Professional employee" means any certificated employee of a school district, including charter districts; provided, however, that superintendents, supervisors or principals may be excluded from the professional employee group if a negotiation agreement between the board and local education organization so specifies.

2. "Local education organization" means any local district organization duly chosen and selected by a majority of the professional employees as their representative organization for negotiations under this act.

3. "Negotiations" mean meeting and conferring in good faith by a local board of trustees and the authorized local education organization, or the respective designated representatives of both parties for the purpose of reaching an agreement, upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties. [1971, ch. 103, § 2, p. 223; am. 1989, ch. 294, § 2, p. 722.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1971, ch. 103, which is compiled as §§ 33-1271 — 33-1276.

JUDICIAL DECISIONS

Local Education Association.

The Oneida Education Association was a "local education association" within the meaning of the act and was the representative of the teacher employees of School District No. 351. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977).

The Bear Lake Education Association was a "local education association" within the meaning of this section and was the proper representative of the teachers of Bear Lake School District No. 33. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

33-1273. School districts — Professional employees — Negotiations. — The local education organization shall be the exclusive representative for all professional employees in that district for purposes of negotiations. The individual or individuals selected to negotiate for the professional employees shall be a member of the organization designated to represent the professional employees and shall be a professional employee of the local school district. However, in the event a local board of trustees chooses to designate any individual(s) other than the superintendent or elected trustee(s) of the school district as its representative(s) for negotiations, the local educational organization is authorized to designate any individual(s) of its choosing to act as its representative(s) for negotiations. A local board of trustees or its designated representative(s) shall negotiate matters covered by a negotiations agreement only with the local education organization or its designated representative(s). [1971, ch. 103, § 3, p. 223; am. 1989, ch. 294, § 3, p. 722.]

STATUTORY NOTES

Compiler's Notes. — The letter "s" in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Cited in: *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

33-1274. Appointment of mediators — Compensation. — In the event the parties in negotiations are not able to come to an agreement upon items submitted for negotiations under a negotiations agreement between the parties, one or more mediators may be appointed. The issue or issues in dispute shall be submitted to mediation at the request of either party in an effort to induce the representatives of the board and the local education organization to resolve the conflict. The procedures for appointment of and compensation for the mediators shall be determined by both parties. [1971, ch. 103, § 4, p. 223; am. 1989, ch. 294, § 4, p. 722.]

JUDICIAL DECISIONS

Effect of Agreements on Contracts.

A school board, currently engaged in collective bargaining negotiations, or in mediation,

with the association representing its teachers, may send out binding, individual contracts to teachers as required by statute, and

those contracts become and are modified by applicable provisions of the agreement which thereafter results from negotiations and mediation which were timely brought and ongoing when the individual contracts were entered into. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).

The fact that the terms of a collective bargaining agreement may not be settled and reduced to a written binding contract at the

time of the proffering of individual teacher contracts is immaterial, since the school boards and teachers may offer and accept employment subject to the terms of a collective bargaining agreement yet to be agreed upon by the parties. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).

Cited in: *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

33-1275. Fact-finders — Appointment — Hearings. — 1. If mediation fails to bring agreement on all negotiable issues, the issues which remain in dispute may be submitted to fact-finding by request of either party. One or more fact-finders shall be appointed by the parties by mutual agreement. If such agreement cannot be reached within thirty (30) days of the request for such appointment, the state superintendent of public instruction shall make such appointment. The fact-finder shall have authority to establish procedural rules, conduct investigations and hold hearings during which each party to the dispute shall be given an opportunity to present its case with supporting evidence.

2. Within thirty (30) days following designation of the fact-finder, he shall submit a report in writing to the respective representatives of the board and the professional employees, setting forth findings of fact and recommendations on the issues submitted. [1971, ch. 103, § 5, p. 223.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

JUDICIAL DECISIONS

Effect of Agreements on Contracts.

A school board, currently engaged in collective bargaining negotiations, or in mediation, with the association representing its teachers, may send out binding, individual contracts to teachers as required by statute, and those contracts become and are modified by applicable provisions of the agreement which thereafter results from negotiations and mediation which were timely brought and ongoing when the individual contracts were entered into. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).

The fact that the terms of a collective bargaining agreement may not be settled and reduced to a written binding contract at the time of the proffering of individual teacher contracts is immaterial, since the school boards and teachers may offer and accept employment subject to the terms of a collective bargaining agreement yet to be agreed upon by the parties. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).

Cited in: *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

33-1276. Intent of act. — Nothing contained herein is intended to or shall conflict with, or abrogate the powers or duties and responsibilities vested in the legislature, state board of education, and the board of trustees of school districts by the laws of the state of Idaho. Each school district board of trustees is entitled, without negotiation or reference to any negotiated agreement, to take action that may be necessary to carry out its responsi-

bility due to situations of emergency or acts of God. [1971, ch. 103, § 6, p. 223.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1971, ch. 103 provided that this act should be in full force and effect on and after July 1, 1971.

JUDICIAL DECISIONS

ANALYSIS

Equitable agreements.
Negotiation procedures.

Equitable Agreements.

The theory behind §§ 33-1271 through 33-1276 is that the free opportunity for negotiation between the school districts and accredited representatives of the teacher employees will likely promote agreements which are equitable to both parties. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

tion that structured negotiation procedures would benefit not only school districts and teachers, but the public as well. By these procedures the legislature has specifically empowered and required the board of trustees of each school district to enter into a negotiations agreement. *Gilbert v. Nampa School Dist.* No. 131, 104 Idaho 137, 657 P.2d 1 (1983).

Negotiation Procedures.

The procedures set forth in §§ 33-1271 — 33-1276 reflect the legislature's determina-

33-1277, 33-1278. [Reserved.]

33-1279. Released time for service on state committees and commission. — (1) Each certificated employee of any school district, including specially chartered districts, shall be entitled to and be allowed released time for service on committees and commissions established by the state of Idaho, or established by the legislature, or established by any of the departments or agencies of the state of Idaho.

Each certificated employee shall be entitled to five (5) such days of released time, and time beyond five (5) days shall be allowed at the discretion of the board of trustees.

(2) No such certificated employee shall lose any salary or other benefits because of such released time for service on any such committee or commission and shall not be required to make up any released time spent in serving on any such committee or commission; except that the amount of any honorarium or compensation received for service on committees or commissions, except actual and necessary expenses, shall be deducted from salary otherwise due such certificated employee. [I.C., § 33-1279, as added by 1979, ch. 200, § 1, p. 580.]

33-1280. American Indian languages teaching authorization. — (1) As used in this section, "Indian tribe" is as defined in section 67-4001, Idaho Code.

(2) It is the policy of the state of Idaho to preserve, protect and promote the rights of Indian tribes to use, practice and develop their native

languages and to encourage American Indians in the state to use, study and teach their native languages in order to encourage and promote:

- (a) The survival of the native language;
- (b) Increased student scholarship;
- (c) Increased student awareness of the student's culture and history; and
- (d) Increased student success.

(3) The state board of education shall promulgate rules authorizing American Indian languages teachers to teach in the public schools of this state.

(4) Each Indian tribe may establish its own system of designation for individuals qualified to teach that tribe's native language. In establishing such a system, the tribe shall determine:

- (a) The development of an oral and written qualification test;
- (b) Which dialects shall be used in the test;
- (c) Whether the tribe will standardize the tribe's writing system;
- (d) How the teaching methods will be evaluated in the classroom; and
- (e) The period of time for which a tribal designation shall be valid.

(5)(a) Each Indian tribe shall provide to the state board of education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language.

(b) Upon receiving the names of American Indian languages teachers designated by an Indian tribe, the state board of education shall authorize those individuals as American Indian languages teachers in accordance with rules of the board.

(6) Notwithstanding any other provision of law, the state board of education shall not require an American Indian languages teacher who has obtained tribal designation to teach a native language to hold a specific academic degree or to complete a teacher education program.

(7)(a) An American Indian languages teaching authorization shall qualify the authorized individual to accept a teaching position or assignment in any school district of the state that offers or permits courses in an American Indian language.

(b) A holder of an American Indian languages teaching authorization who does not also have a teaching certificate as provided in section 33-1201, Idaho Code, may not teach in a school district of this state any subject other than the American Indian language for which he or she is authorized to teach. [I.C., § 33-1280, as added by 2002, ch. 265, § 1, p. 787.]

CHAPTER 13

EDUCATIONAL INTERPRETERS

SECTION.

33-1301. Short title.

33-1302. Legislative findings.

33-1303. Definitions.

SECTION.

33-1304. Qualification of educational interpreters.

33-1301. Short title. — This chapter shall be known and may be cited as the "Idaho Educational Interpreter Act." [I.C., § 33-1301, as added by 2006, ch. 173, § 1, p. 531.]

STATUTORY NOTES

Prior Laws. — Former §§ 33-1301 — 33-1303, which comprised I.C., §§ 33-1301, 33-1302 and 33-1303, as added by 1984, ch. 286, § 2, p. 660, were repealed by S.L. 1998, ch. 88, § 8, effective July 1, 1998.

Former §§ 33-1304 — 33-1337, comprising S.L. 1963, ch. 13, §§ 190 — 223, p. 27; am.

1963, ch. 89, § 1, p. 285; am. 1963, ch. 149, § 1, p. 449; am. 1963, ch. 266, § 1, p. 678; am. 1963, ch. 343, § 1, p. 981; am. 1965, ch. 45, § 1, p. 68; am. 1965, ch. 90, § 1, p. 150; am. 1965, ch. 194, § 1, p. 406, were repealed by S.L. 1967, ch. 115, § 12, p. 222, effective July 1, 1967.

33-1302. Legislative findings. — The legislature hereby finds that interpreting services in Idaho public schools, kindergarten through grade twelve (12), for students who are deaf, hard of hearing or deaf-blind need to be improved. The absence of state standards for evaluating educational interpreters allows for inconsistencies in the delivery of educational information to students who are in need of such services. The legislature recognizes that educational interpreters in Idaho public schools must not only interpret the spoken word but must also convey concepts and facilitate the student's understanding of the educational material. The legislature also finds that among the many factors that influence student success, there is a correlation between the academic achievements of deaf, hard of hearing and deaf-blind students and the competency of their interpreters. Therefore, the legislature finds that Idaho educational public policy is served by establishing standards for persons employed in the Idaho public schools as educational interpreters. [I.C., § 33-1302, as added by 2006, ch. 173, § 1, p. 531.]

STATUTORY NOTES

Prior Laws. — For former § 33-1302, see Prior Laws, § 33-1301.

33-1303. Definitions. — The following words and phrases used in this chapter are defined as follows:

- (1) "Board" means the state board of education.
- (2) "Deaf" means a person who is not able to process information aurally and whose primary means of communication is visual.
- (3) "Deaf-blind" means a person who is deaf or hard of hearing and who also has significant visual impairment or is legally blind.
- (4) "Educational interpreter" means a person employed in the Idaho public schools, kindergarten through grade twelve (12), to provide interpreting services to students who are deaf, hard of hearing or deaf-blind.
- (5) "Educational interpreter performance assessment" means a statistically valid and reliable assessment tool administered by the boys town national research hospital or its successor organization.
- (6) "Hard of hearing" means a person who has a hearing deficit, who is able to process information aurally with or without the use of a hearing aid or other device that enhances the ability of the person to hear, and whose primary means of communication may be visual.
- (7) "Interpreter education program" means a postsecondary degree program of at least two (2) years in duration that is accredited by the state

board of education or an equivalent program accredited by another state, district or territory or by a professional accreditation body.

(8) "Interpreting" means the process of providing accessible communication between and among persons who are deaf, hard of hearing or deaf-blind, and those who are hearing. The process includes, but is not limited to, communication between American sign language or other form of manual communication and English. The process may also involve various other modalities that involve visual, gestural and tactile methods. [I.C., § 33-1303, as added by 2006, ch. 173, § 1, p. 531.]

STATUTORY NOTES

Prior Laws. — For former § 33-1303, see Prior Laws, § 33-1301.

Compiler's Notes. — The educational interpreter performance assessment, referred to in subsection (5), can be found at <http://classroominterpreting.org/EIPA/index.asp>.

33-1304. Qualification of educational interpreters. — (1) Except as provided in this section, no person shall act as an educational interpreter in an Idaho public school unless the person has been qualified to do so. The person shall be qualified if the person:

(a) Has achieved a score of 3.5 or higher on the educational interpreter performance assessment or has achieved a comparable score on an equivalent test as determined by the board; or

(b) Is currently certified by:

(i) The registry of interpreters for the deaf;

(ii) The national association of the deaf at a level of III or higher;

(iii) The registry of interpreters for the deaf, oral transliteration for oral transliterators; or

(iv) The testing, evaluation, and certification unit for cued language transliterators.

(2) An educational interpreter currently employed in an Idaho public school may continue in the practice of educational interpreting without meeting the requirements of subsection (1) of this section, provided that such requirements are met on or before June 30, 2009.

(3) Effective July 1, 2009, newly-hired educational interpreters, who have not worked in an Idaho public school as an educational interpreter in kindergarten through grade twelve (12) prior to the enactment of this chapter, may apply in writing to the board for emergency authorization to work as an educational interpreter for two (2) years before being required to meet the requirements of subsection (1) of this section. An education interpreter who has received an emergency authorization under this subsection (3) may apply in writing to the board for a one-time, one (1) year extension of the emergency authorization. The board may grant such a one (1) year extension of the emergency authorization for good cause shown.

(4) A graduate of an interpreter education program may serve as an educational interpreter in Idaho public schools, kindergarten through grade twelve (12) before meeting the requirements of subsection (1) of this section for one (1) year following such graduation.

(5) Educational interpreters employed by an Idaho public school in kindergarten through grade twelve (12) must complete a minimum of eighty

(80) hours of training in the areas of interpreting or transliterating every five (5) years. This training must be documented and may include home study coursework, seminars, workshops and mentoring programs.

(6) The board is authorized to promulgate rules necessary to implement this chapter. [I.C., § 33-1304, as added by 2006, ch. 173, § 1, p. 531.]

STATUTORY NOTES

Prior Laws. — For former § 33-1304, see Prior Laws, § 33-1301.

Compiler's Notes. — The Idaho registry of interpreters for the deaf, referred to in paragraph (1)(b)(i), can be found at <http://www.idahorid.org/membershp>.

www.idahorid.org/membershp.

The national association of the deaf, referred to in paragraph (1)(b)(ii), can be found at <http://www.nad.org>.

CHAPTER 14

TRANSFER OF PUPILS

SECTION.

33-1401. Definitions.

33-1402. Enrollment options.

33-1402A. [Repealed.]

33-1403. Transfer of pupils by initiative of the board of trustees.

33-1404. Districts to receive pupils.

SECTION.

33-1405. Rates of tuition — Tuition certificates.

33-1406. Bills of tuition.

33-1407. Payment of tuition — Suit to recover payment.

33-1408. Special levy for tuition.

33-1401. Definitions. — For the purposes of tuition charges and payments, the following words and phrases shall have these meanings:

1. "District" means any public school district including specially chartered school districts.

2. "Residence" of a pupil means the residence of his parent or guardian.

3. "Home district" means the school district of the pupil's residence.

4. "Creditor district" means a district in which nonresident pupils are in attendance.

5. "Nonresident pupils" mean pupils attending schools in districts other than their home districts, or from other states.

6. "Debtor district" means the home district of nonresident pupils.

7. "Pupil" means a pupil in any grade, kindergarten through twelve (12).

8. "Elementary pupil," in the case of districts not giving instruction above grade eight (8), means any pupil. In all other districts it means any pupil in grades kindergarten through six (6).

9. "Secondary pupil" means, in the case of districts which give instruction beyond grade eight (8) any pupil in grades seven (7) through twelve (12).

10. "Guardian" means any person so designated by court order, or any person with whom the pupil is residing and making his home on a full-time basis, provided such person has in his possession a properly executed power of attorney for the care and custody of the pupil for a period of time not less than the balance of the school term. [1963, ch. 13, § 72, p. 27; am. 1974, ch. 76, § 1, p. 1163; am. 1990, ch. 43, § 1, p. 67.]

RESEARCH REFERENCES

A.L.R. — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. 53 A.L.R.3d 641.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. 56 A.L.R.3d 641.

33-1402. Enrollment options. — Beginning with the 1991-92 school year, an enrollment options program shall be implemented as provided in this section.

Whenever the parent or guardian of any pupil determines that it is in the best interest of the pupil to attend a school within another district, or to attend another school within the home district, such pupil, or pupils, may be transferred to and attend the selected school, subject to the provisions of this section and section 33-1404, Idaho Code. The pupil's parent or guardian must apply annually for admission to a school within another district, or to another school within the home district, on a form provided by the state department of education. The application, accompanied by the pupil's accumulative record, must be submitted to the receiving school district by February 1 for enrollment during the following school year, and notice of such application given to the home district. The receiving school district, or the receiving school within the home district, shall notify the applicant within sixty (60) days and, if denied, must include written explanation of the denial. Upon agreement between the resident and the nonresident school boards, or between the affected schools within the home district, the deadlines for application may be waived. Whenever any pupil enrolls in, and attends a school outside the district within which the parent or guardian resides, the parent or guardian shall be responsible for transporting the pupil to and from the school or to an appropriate bus stop within the receiving district. For students attending another school within the home district, the parent or guardian is responsible for transporting the pupil to and from an appropriate bus stop. Tuition shall be waived for any pupils allowed under the provisions of this section.

No pupil shall gain eligibility to participate in extracurricular activities in violation of policies governing eligibility as a result of an enrollment option transfer to another school district.

A pupil who applies and is accepted in a nonresident school district, but fails to attend the nonresident district, shall be ineligible to again apply for an enrollment option in that nonresident district.

No district shall take any action to prohibit or prevent application by resident pupils to attend school in another school district or to attend another school within the home district. By resolution of the board of trustees, any district may opt not to receive pupils in the enrollment options program.

A pupil under suspension or expulsion shall be ineligible for the provisions of this section.

The state department of education shall conduct an annual survey of districts participating in the enrollment options program to determine the number of participants, the number of denied applications, the effectiveness

of the program, and other relevant information, and prepare an annual report of the program. [I.C., § 33-1402, as added by 1990, ch. 43, § 2, p. 67; am. 1993, ch. 76, § 1, p. 202.]

STATUTORY NOTES

Prior Laws. — Former § 33-1402, which comprised S.L. 1963, ch. 13, § 73, p. 27; am. 1975, ch. 22, § 1, p. 34, was repealed by S.L. 1976, ch. 85, § 1.

33-1402A. Transfer of student in youth-care facility. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-1402A, as added by 1967, ch. 323, § 1, p. 952; am. 1973, ch. 293, § 1, p. 617, was repealed by S.L. 1983, ch. 85, § 1, effective March 28, 1983.

33-1403. Transfer of pupils by initiative of the board of trustees. — Whenever the board of trustees of any school district shall determine that it is in the best interest of any of its pupils to attend school in another district within this state, the boards of trustees of the districts may annually agree, in writing, that such pupil or pupils shall be transferred to and attend the designated school or schools of the other district party to the agreement.

Whenever the board of trustees of any Idaho school district abutting upon another state shall determine that it is in the best interest of any of its pupils to attend school in a school district in such neighboring state, the board of trustees may annually agree, in writing, with the governing board of the nearest appropriate school district in the neighboring state for the education, and transportation if the school district attended abuts on the home district, of such pupil or pupils. Any such agreement shall specify the rate of tuition, and cost of transportation if any, to be paid by the Idaho school district, and the agreement shall be entered into the records of the board of trustees and a copy thereof filed with the state board of education.

The board of trustees of any Idaho school district, as a creditor district, may, subject to the approval of the state board of education, enter into an agreement with the governing body of any school district in another state, as the debtor district, to educate, and if necessary transport, any of the pupils of such debtor district upon such terms and conditions as may be agreed upon and approved, but the rate of tuition to be charged by the Idaho school district shall be not less than the gross per-pupil cost of the credit district, as defined in section 33-1405, Idaho Code, plus the per-pupil costs paid by the state for the employer's share of social security, and the employer's share of retirement for the employees of the creditor district for the previous fiscal year, and other appropriate costs, all as determined by the state board of education. A copy of the agreement shall be entered into the records of the board of trustees and a copy thereof shall be filed with the state board of education. [1963, ch. 13, § 74, p. 27; am. 1973, ch. 117, § 1, p. 218; am. 1975, ch. 22, § 2, p. 34; am. 1976, ch. 85, § 2, p. 290; am. 1978, ch. 174, § 1, p. 398.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Discretion of trustees.
 Liability for tuition.
 Transfer out of state.

Discretion of Trustees.

Whether children from one district should be permitted or required to attend school in another district in or out of the state, except where a vote of the electors was required, was left to the discretion of the trustees of the district wherein they resided. *Hay v. Class B School Dist. No. 42, 84 Idaho 501, 373 P.2d 922 (1962).*

The residents of the previously existing school districts in voting their approval of a plan for reorganization were charged with knowledge of the discretionary power vested in the school trustees by the statutes to make such changes in the operation of the district and the place of attendance of the children of its various areas as changing conditions could warrant or require. *Hay v. Class B School Dist. No. 42, 84 Idaho 501, 373 P.2d 922 (1962).*

Liability for Tuition.

The Idaho statutes contemplated that tuition would be paid for a nonresident pupil

and the mere change of the physical presence of the pupil from living in one district to living in another, without lawful change of residence, did not avoid provisions for payment of tuition. *Smith v. Binford, 44 Idaho 244, 256 P. 366 (1927).*

Transfer Out of State.

The adoption of the plan for the attendance of Idaho students at the nearest and most convenient schools either in the adjoining state of Washington or another county of Idaho was not intended to be a permanent arrangement; but the establishment or discontinuance of attendance units was left to the discretion of the trustees especially where, in view of the increased tuition rate in Washington, schooling could be more advantageously furnished in Idaho. *Hay v. Class B School Dist. No. 42, 84 Idaho 501, 373 P.2d 922 (1962).*

33-1404. Districts to receive pupils. — Every school district shall receive and admit pupils transferred thereto, where payment of their tuition is to be paid by the home district, or waived by the receiving district, except when any such transfer would work a hardship on the receiving district. Each receiving school district shall be governed by written policy guidelines, adopted by the board of trustees, which define hardship impact upon the district or upon an individual school within the district. The policy shall provide specific standards for acceptance and rejection of applications for accepting out of district pupils. Standards may include the capacity of a program, class, grade level or school building. Standards may not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, or proficiency in the English language.

Nonresident pupils who are placed by court order under provisions of the Idaho juvenile corrections or child protective acts and reside in licensed homes, agencies and institutions shall be received and admitted by the school district in which the facility is located without payment of tuition.

Homeless children and youth as defined by the Stewart B. McKinney homeless assistance act (P.L. 100-77), may attend any school district or school within a district without payment of tuition when it is determined to be in the best interest of that child. [1963, ch. 13, § 75, p. 27; am. 1978, ch. 174, § 2, p. 398; am. 1983, ch. 85, § 2, p. 176; am. 1990, ch. 43, § 3, p. 67; am. 1990, ch. 272, § 1, p. 766; am. 2001, ch. 93, § 3, p. 232; am. 2004, ch. 23, § 6, p. 25.]

STATUTORY NOTES

Cross References. — Child protective act, § 16-1601 et seq.

Juvenile corrections act, § 20-501 et seq.

Amendments. — This section was amended by two 1990 acts, ch. 43, § 3 and ch. 272, § 1, which appear to be compatible and have been compiled together.

The 1990 amendment, by ch. 43, § 3, in the first sentence of the first paragraph, after “a hardship on the receiving district” deleted, “but no district shall be required to accept and admit secondary school pupils who have not completed the grades given in their home districts, nor pupils who have failed in any of their home district classes in the year next preceding the proposed transfer”; added the

second, third and fourth sentences to the first paragraph; and designated the former second sentence as the present second paragraph.

The 1990 amendment, by ch. 272, § 1, designated the former second sentence as the present second paragraph; at the end of the second paragraph inserted “without payment of tuition”; and added the third paragraph.

Federal References. — Pursuant to Act Oct. 30, 2000, P.L. 106-400, § 2, references in federal law to the Stewart B. McKinney Homeless Assistance Act, cited in the third paragraph of this section, shall be deemed to be references to the McKinney-Vento Homeless Assistance Act, which is compiled as 42 U.S.C. § 11301 et seq.

33-1405. Rates of tuition — Tuition certificates. — The state department of education shall prepare and distribute all necessary forms; and shall issue to each school district, annually, a tuition certificate bearing a serial number, which certificate shall authorize the receiving district to charge and to bill for the tuition of its nonresident pupils where tuition has not been waived.

In determining tuition rates to be charged by any creditor school district, the state department of education shall compute the sum of that district's maintenance and operation costs, depreciation on its buildings, equipment, and other property, and the interest, if any paid by it on bonded debt or registered warrants. The said state department of education shall then compute what proportion of the sum of said costs, depreciation and interest is allocable to elementary schools, and what proportion is allocable to secondary schools, in the district. The proportion allocable to elementary schools shall then be divided by the average daily attendance of elementary school pupils, and the proportion allocable to secondary schools shall be divided by the average daily attendance of secondary school pupils, in the district, and the amount so determined shall be the gross per-pupil cost, elementary or secondary, as the case may be. The net per-pupil cost shall be the gross per-pupil cost less the per-pupil apportionment to the district of any foundation program funds.

Computations of tuition rates shall be made as of the school year next preceding the year for which tuition charges are determined and made.

Charges for tuition made by any creditor school district shall be its net per-pupil cost, as hereinabove defined; except that its gross per-pupil cost shall be charged where any pupil has transferred to the creditor district by transfer other than one prescribed by section 33-1403, Idaho Code, or where the home district of any pupil attending school in the creditor district is without the state of Idaho.

The board of trustees of a school district may request a waiver from the state board of education of any portion of the tuition rate determined pursuant to this section. A waiver request must be made for each individual student, and may be requested for up to four (4) years, subject to annual

review by the local board of trustees. Waivers must be requested before April 1 of the year prior to the operative date. [1963, ch. 13, § 76, p. 27; am. 1985, ch. 107, § 13, p. 191; am. 1990, ch. 43, § 4, p. 67; am. 2005, ch. 97, § 1, p. 317.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2005, ch. 97, declared an emergency. Approved March 1, 2005.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Determination of residence.
Liability for tuition.

Determination of Residence.

Payment of tuition depended on legal residence of parent. *Smith v. Binford*, 44 Idaho 244, 256 P. 366 (1927).

Liability for Tuition.

The Idaho statutes contemplated that tuition would be paid for a nonresident pupil

and the mere change of the physical presence of the pupil from living in one district to living in another, without lawful change of residence, did not avoid provisions for payment of tuition. *Smith v. Binford*, 44 Idaho 244, 256 P. 366 (1927).

RESEARCH REFERENCES

A.L.R. — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. 53 A.L.R.3d 641.

Validity of exaction of fees from children attending elementary or secondary public

schools. 41 A.L.R.3d 752.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. 56 A.L.R.3d 641.

33-1406. Bills of tuition. — Bills of tuition for nonresident pupils shall be rendered by each creditor district and for nonresident pupils attending any school of the creditor district under the provisions of section 33-1403 or 33-1404, Idaho Code, the bill of tuition shall be submitted to the home district of such pupils. In all other cases, the creditor district may submit to the parent or guardian of any nonresident pupil attending school in its district a bill of tuition of such pupil, and such parent or guardian shall be liable for the payment of said tuition, if so billed. Tuition reimbursement for nonresident pupils who are placed by court order under provisions of the Idaho juvenile corrections or child protective acts may be obtained by the creditor district through procedures established in section 33-1002, Idaho Code, for nonresident tuition-equivalency allowance.

Each bill of tuition submitted to a home district shall show the serial number of the tuition certificate last issued to the creditor district by the state department of education and shall show also the number of pupils for whom tuition is charged, which charge shall be as shown by the said tuition certificate.

Bills of tuition, if submitted other than annually, shall be apportioned according to the number of school months for which any such bill is applicable. A fraction of a school month shall be deemed a school month. [1963, ch. 13, § 77, p. 27; am. 1974, ch. 76, § 2, p. 1163; am. 1976, ch. 85, § 3, p. 290; am. 1983, ch. 85, § 3, p. 176; am. 1985, ch. 107, § 14, p. 191; am. 2004, ch. 23, § 7, p. 25.]

STATUTORY NOTES

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| Cross References. — Child protective act, § 16-1601 et seq. Juvenile corrections act, § 20-501 et seq. | ch. 85 declared an emergency. Approved March 10, 1976. Section 5 of S.L. 1983, ch. 85 declared an emergency. Approved March 28, 1983. |
| Effective Dates. — Section 4 of S.L. 1976, | |

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

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| Residence in Two Districts. Where parents of pupils resided in a village in one school district part of the time and on farms in another district part of the time and their children attended school in the village | district most of the time, they were residents of the village district, entitled to attend its high school without tuition contribution from the farm district. Independent Sch. Dist. No. 2 v. Butler, 53 Idaho 187, 22 P.2d 685 (1933). |
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RESEARCH REFERENCES

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| A.L.R. — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. 53 A.L.R.3d 641. | Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. 56 A.L.R.3d 641. |
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33-1407. Payment of tuition — Suit to recover payment. — The board of trustees of any debtor district shall allow and order paid any bill for tuition received by it in proper form, at the first regular meeting following receipt of said bill.

Whenever any school district, or person, liable for the payment of tuition, shall fail or refuse to pay the same after payment thereof is due, the creditor district may commence suit against such district or person in the district court in and for the county in which such district maintains its administrative offices, or in which such person resides. [1963, ch. 13, § 78, p. 27.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

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| Liability for tuition. Recovery of tuition. | |
| Liability for Tuition. The Idaho statutes contemplated that tuition should be paid for a nonresident pupil | and the mere change of the physical presence of the pupil from living in one district to living in another, without lawful change of resi- |

dence, did not avoid provisions for payment of tuition. *Smith v. Binford*, 44 Idaho 244, 256 P. 366 (1927).

Recovery of Tuition.

Under former statute, a county was not prohibited from recovering tuition for school pupils from another county, though the super-

intendent's certificate was not sent within the prescribed time, since the time was not of the essence of the right to statutory contribution, and statutory provisions concerning timely notice were "directory" and not "mandatory" as to causes of action. *Bingham County v. Bonneville County*, 63 Idaho 669, 125 P.2d 315 (1942).

33-1408. Special levy for tuition. — Any school district is hereby authorized to make a levy above the maintenance and operation levy otherwise authorized by law for the purpose of paying tuition costs of its students who, under authorization of the board of trustees of the district, attend school in another district in Idaho. Such levy shall be exempt from the provisions of section 63-802, Idaho Code. [I.C., § 33-1408, as added by 1981, ch. 235, § 1, p. 475; am. 1983, ch. 237, § 1, p. 642; am. 1996, ch. 208, § 8, p. 658; am. 1996, ch. 322, § 29, p. 1029; am. 2006 (1st E.S.), ch. 1, § 12.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 208, § 8, effective July 1, 1996, and ch. 322, § 29, effective January 1, 1997 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 208, § 8, deleted ", and from the provisions of section 63-2220, Idaho Code" from the end of the former last sentence, which was deleted in its entirety by ch. 322, § 29, see below.

The 1996 amendment, by ch. 322, § 29, deleted the former last sentence which read, "Any levy made under the provisions of this section shall be exempt from the limitation imposed by section 63-923(1), Idaho Code, and from the provisions of section 63-2220, Idaho Code."

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted "in Idaho" for "either in or out of Idaho, except for those costs reimbursed by the state under border contracts" at the end of the first sentence and added the last sentence.

Compiler's Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

Effective Dates. — Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

CHAPTER 15

TRANSPORTATION OF PUPILS

SECTION.

33-1501. Transportation authorized.

33-1502. Bus routes — Non-transportation zones.

33-1503. Payments when transportation not furnished.

33-1504. School buses.

33-1505. Seller's warranty.

33-1506. Inspection of school buses.

33-1507. Liability insurance related to transportation.

33-1508. Operation of school buses.

33-1509. School bus drivers — Definition — Qualification — Duties.

SECTION.

33-1510. Contracts for transportation service.

33-1511. State board of education — Powers and duties related to transportation.

33-1512. Leasing of school buses.

33-1513. Pupil transportation support program fund.

33-1514. Fee — Reimbursement for pupil transportation costs.

33-1501. Transportation authorized. — To afford more equal opportunity for public school attendance, the board of trustees of each district, including specially chartered school districts, shall, where practicable, provide transportation for the public school pupils within the district, and pupils resident within adjoining districts annually agreed to in writing by the districts involved, under conditions and limitations herein set forth. Nonpublic school students may be transported, where practicable, when the full costs for providing such transportation are recovered. In approving the routing of any school bus, or in the maintenance and operation of all such transportation equipment, or in the appointment or employment of chauffeurs, the primary requirements to be observed by the board of trustees are the safety and adequate protection of the health of the pupils. Nothing herein contained shall prevent any board of trustees from denying transportation to any pupil in any school bus operated by or under the authority of said board, upon good cause being given, in writing, to the parents or guardian, or either of them, of such pupil.

No board of trustees shall be required to provide transportation for any pupil living less than one and one-half (1 1/2) miles from the nearest appropriate school. A board of trustees may require pupils who live less than one and one-half (1 1/2) miles from the nearest established bus stop to walk or provide their own transportation to such bus stop. That distance shall be determined by the nearest and best route from the junction of the driveway of the pupil's home and the nearest public road, to the nearest door of the schoolhouse he attends, or to the bus stop, as the case may be. The board may transport any pupil a lesser distance when in its judgment the age or health or safety of the pupil warrants.

A day care center, family day care home, or a group day care facility, as defined in section 39-1102, Idaho Code, may substitute for the student's residence for student transportation to and from school. School districts may not transport students between child care facilities and home. Student transportation between a child care facility and a school will qualify for state reimbursement providing that the child care facility is one and one-half (1 1/2) miles or more from the school to which the student is transported.

To effectuate the public policy hereby declared, the board of trustees of any school district may purchase or lease, and maintain and operate school buses and vans, which vans shall not have a seating capacity in excess of fifteen (15) persons; may enter into agreements or contracts for the use of a charter bus or buses; may enter into contracts with individuals, firms, corporations or private carriers; or may make payments to parents or guardians, subject to the limitations herein provided, when transportation is not furnished by the district. [1963, ch. 13, § 79, p. 27; am. 1970, ch. 91, § 1, p. 226; am. 1982, ch. 92, § 1, p. 169; am. 1985, ch. 241, § 1, p. 569; am. 1991, ch. 177, § 1, p. 440; am. 1999, ch. 373, § 1, p. 1020.]

STATUTORY NOTES

Cross References. — Transportation support program, § 33-1006.

JUDICIAL DECISIONS

ANALYSIS

Application.
 Constitutionality.
 Equal protection of laws.
 Safety regulations.

Application.

Since this section is permissive in nature, it did not impose a mandatory duty upon the district to provide a safety busing program, where facts supported the district court's finding that the busing was provided as a courtesy only, and not for safety purposes, *Rife v. Long*, 127 Idaho 841, 908 P.2d 143 (1995).

Constitutionality.

The allocation of state funds to several school districts pursuant to this section (prior to the 1985 amendment), for the purposes of transportation of the parochial students, the effect of which would be to aid the school was prohibited under the provisions of Const. Art. IX, § 5. *Epeldi v. Engelking*, 94 Idaho 390, 488 P.2d 860 (1971), cert. denied, 406 U.S. 957, 92 S. Ct. 2058, 32 L. Ed. 2d 343 (1972).

Equal Protection of Laws.

The denial to the students attending parochial schools of equal rights to ride the public buses did not violate the equal protection clause of the Fourteenth Amendment of the United States Constitution. *Epeldi v.*

Engelking, 94 Idaho 390, 488 P.2d 860 (1971), cert. denied, 406 U.S. 957, 92 S. Ct. 2058, 32 L. Ed. 2d 343 (1972) (decision prior to 1985 amendment).

Safety Regulations.

The statutory requirements in this chapter and the school district's response to those requirements through the compilation and adoption of safety rules and regulations were intended to impact primarily upon the safety and adequate protection of the health of the pupils in the transportation of school pupils; in short, the safety rules were designed to prevent accidents in the transportation of pupils. *Quincy v. Joint Sch. Dist. No. 41*, 102 Idaho 764, 640 P.2d 304 (1981).

Where uncontroverted evidence indicated that the district provided a convenience shuttle bus program as a courtesy only, the district assumed a duty to provide safe shuttle busing to those who chose to ride, but it did not assume a duty to see that the riders' walk home was a safe one. *Rife v. Long*, 127 Idaho 841, 908 P.2d 143 (1995).

RESEARCH REFERENCES

A.L.R. — Constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils. 41 A.L.R.3d 344.

Nature and extent of transportation that must be furnished under statute requiring

free transportation of school pupils. 52 A.L.R.3d 1036.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 23 A.L.R.5th 1.

33-1502. Bus routes — Non-transportation zones. — The board of trustees of each school district may establish, and alter, bus routes and establish, and alter, non-transportation zones. Such routes and zones shall be determined for each year not later than the regular August meeting of the board; but nothing herein shall be construed as limiting the board in altering such routes or zones when change in the condition of the roads, or in the number of pupils being transported would justify such alteration.

A non-transportation zone shall comprise an area of a school district designated by the board of trustees which is impracticable, by reason of sparsity of pupils, remoteness, or condition of roads, to serve by established bus routes.

Whenever practicable, routes shall be so established that no bus stop shall be more than one and one-half (1 1/2) miles from the intersection of the driveway of the home of any pupil otherwise eligible for transportation and

the nearest public road; except that no board of trustees shall be required to route school buses or other passenger equipment over any road not maintained as a part of a highway district, county, state or federal highway system, or by the state or national forest service; except, that the primary requirements to be observed by the board of trustees are the safety and adequate protection of the health of the pupils. [1963, ch. 13, § 80, p. 27.]

33-1503. Payments when transportation not furnished. —

a. Whenever any pupil lives more than one and one-half (1 1/2) miles from any established bus stop or from the school of attendance, as designated by the board of trustees, and such pupil is regularly transported by private vehicle not under contract with the school district, the board may pay to the parent or guardian an amount per month up to ten dollars (\$10.00) per vehicle plus mileage at the current rate established by the state board of examiners for each round trip approved.

b. Whenever in the judgment of the board of trustees any pupil residing within the area of a nontransportation zone, and otherwise eligible to transportation, cannot be transported in any manner herein authorized, the said board may pay to the parent or guardian thereof such amount of the cost incurred by the parent or guardian for the board and lodging of the pupil as may be authorized by the board of trustees. [1963, ch. 13, § 81, p. 27; am. 1977, ch. 236, § 1, p. 710; am. 1982, ch. 92, § 2, p. 169; am. 1986, ch. 48, § 1, p. 140; am. 1997, ch. 115, § 1, p. 289.]

STATUTORY NOTES

Cross References. — Mileage rate set by state board of examiners, § 67-2008.

RESEARCH REFERENCES

A.L.R. — Nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils. 52 A.L.R.3d 1036.

33-1504. School buses. — A motor vehicle shall be deemed a "school bus" when it has a seating capacity of more than ten (10) persons and meets the current national and state minimum standards for school bus construction, and is owned and operated by a school district or a common carrier and is used exclusively for transporting pupils, or is owned by a transportation contractor and is used regularly for transporting pupils. [1963, ch. 13, § 82, p. 27; am. 1982, ch. 92, § 3, p. 169.]

JUDICIAL DECISIONS

Cited in: *Quincy v. Joint Sch. Dist.* No. 41, 102 Idaho 764, 640 P.2d 304 (1981).

33-1505. Seller's warranty. — All school buses shall at all times conform to standards of construction therefor specified by the state board of education. No contract shall be negotiated or executed for the purchase or

sale of any school bus, body, or chassis, where the same is to be used as, or as a part of, a school bus, which said contract would provide for construction standards not in conformity with those specified by the said state board.

Any person selling or offering for sale any school bus, or any body or chassis thereof, shall warrant that such school bus, body or chassis sold or offered for sale is in no respect below the standards of construction prescribed therefor by the state board of education. If, after the sale of any school bus, or any body or chassis, and before the same is placed into operation, an inspection as hereinafter required shall disclose that such equipment is below the said minimum standards, the seller shall, immediately after notification thereof and at his own expense, make such additions or changes as will meet the said minimum standards or, in lieu thereof, the said seller shall refund the full purchase price paid for such equipment by the buyer, and repossess the said equipment. [1963, ch. 13, § 83, p. 27.]

33-1506. Inspection of school buses. — All school buses shall at all times conform to the standards of construction prescribed therefor by the state board of education.

Before any newly acquired school bus is used for transporting pupils it shall be inspected by a duly authorized representative of the state department of education, and if, upon inspection, it conforms to prescribed standards of construction, or such other standards prescribed by law or regulation, it may be used for transporting pupils; otherwise, no such school bus shall be used for that purpose.

The board of trustees of each school district shall provide for an annual inspection of all school buses by district personnel or upon contract at intervals of not more than twelve (12) months. The district, over the signature of the superintendent, shall file with the state department of education its report of inspection of the school buses operated by the authority of the school district. At intervals of not more than sixty (60) days during each school year the board of trustees shall cause inspection to be made of all school buses operating under the authority of the board. In addition, the state department of education shall conduct random, spot inspections of school buses throughout the school year.

Whenever any school bus is found, upon inspection, to be deficient in any of the prescribed standards, or is found in any way to be unsafe or unfit for the transportation of pupils, such vehicle shall be withdrawn from service and shall not be returned to service until the district certifies the necessary repairs have been made. [1963, ch. 13, § 84, p. 27; am. 1980, ch. 330, § 1, p. 852; am. 1982, ch. 92, § 4, p. 169; am. 1997, ch. 29, § 1, p. 54.]

33-1507. Liability insurance related to transportation. — The board of trustees of each school district owning and operating vehicles for the transportation of pupils, and any transportation contractor, shall have in effect at all times for each vehicle so used, insurance purchased from a company or companies licensed to operate in this state, in amounts not lower than the minimums set by the state board of education, indemnifying the insured against claims for any injury to or death of a person(s) arising

out of the operation of the school transportation system.

Each school district may purchase and keep in force, insurance in excess of such required minimum amounts; and insurance indemnifying the district, its officers and employees against any tort claims arising out of the operation of its school transportation system. [1963, ch. 13, § 85, p. 27; am. 1982, ch. 92, § 5, p. 169.]

STATUTORY NOTES

Compiler's Notes. — The letter "s" in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Liability insurance coverage.
Limitation upon contract.

Liability Insurance Coverage.

The occurrence involved, namely the drowning of a child in a pond on school premises, was not covered by liability insurance which the former section provided had to be carried on each school bus for protection of the pupils since such drowning did not grow out of the operation of the transportation system and, hence, the liability coverage afforded by the policy could not be extended to

such occurrence. *Anneker v. Quinn-Robbins Co.*, 80 Idaho 1, 323 P.2d 1073 (1958).

Limitation Upon Contract.

The parties involved, namely the school district and the insurer, could not contract in excess of that legislatively authorized, namely the transportation system. *Anneker v. Quinn-Robbins Co.*, 80 Idaho 1, 323 P.2d 1073 (1958).

RESEARCH REFERENCES

A.L.R. — Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 23 A.L.R.5th 1.

33-1508. Operation of school buses. — (1) All school buses shall at all times be operated in conformity with law and with rules of the Idaho state police and the state board of education.

(2) No school bus shall:

(a) Cross any railroad track, or enter or cross any arterial highway without first coming to a full stop. If any such crossing, intersection or access be obscured by trees, buildings or other objects, or because of wind, storm or fog, the school bus driver shall open such windows and doors as will permit him to determine when it is safe to proceed;

(b) Be operated at any time for the transportation of pupils by any person who does not have a current commercial driver's license (CDL) as specified in section 49-105, Idaho Code, and the minimum training for bus drivers as prescribed by the state board of education;

(c) Be operated at any time in excess of its maximum occupancy as determined by the manufacturer. Occupancy at no time shall exceed three (3) persons in a seat. [1963, ch. 13, § 86, p. 27; am. 1982, ch. 92, § 6, p.

169; am. 1989, ch. 88, § 68, p 151; am. 2000, ch. 426, § 1, p. 1379; am. 2000, ch. 469, § 81, p. 1450; am. 2005, ch. 88, § 1, p. 305.]

STATUTORY NOTES

Amendments. — This section was amended by two 2000 acts — ch. 426, § 1 and ch. 469, § 81, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 426, § 1, deleted “and regulations” following “with rules” in subsection 1.; substituted “school bus driver” for “chauffeur” in subdivision 2.a.; and substituted “commercial driver’s license (CDL)” as specified in section 49-105, Idaho

Code” for “chauffeur license” in subdivision 2.b.

The 2000 amendment, by ch. 469, § 81, redesignated former subsections 1. and 2. and subdivisions 2.a. through 2.c. as present subsections (1) and (2) and subdivisions (2)(a) through (2)(c), respectively.

Effective Dates. — Section 70 of S.L. 1989, ch. 88 provided that the act would become effective April 1, 1990.

RESEARCH REFERENCES

A.L.R. — Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equip-

ment for other than school purposes. 37 A.L.R.3d 712.

33-1509. School bus drivers — Definition — Qualification — Duties. — For the purpose of this chapter the term “school bus driver” shall mean any person who at any time is operating a school bus while transporting pupils to or from school, or to or from approved school activities.

A board of trustees shall employ school bus drivers only upon prior application in writing and the board shall require of school bus drivers employed by others who transport pupils of their district under contract, the same information required in such written application. Each application shall contain at least the minimum information specified by the state department of education.

Any person employed as a school bus driver shall be over the age of eighteen (18) years, be of good moral character and not addicted to the use of intoxicants or narcotics. School bus drivers shall meet the physical examination standards of the federal motor carrier safety regulations. Provided however, that individuals with insulin-dependent diabetes mellitus, who are otherwise medically qualified under the physical examination standards of the federal motor carrier safety regulations, may request a waiver for this condition from the state department of education. If the applicant meets the requirements as specified in subsections (1) through (7) of this section, the department shall grant a waiver. The department shall notify each applicant and each affected school district of its determination of eligibility with regard to each application for a waiver. An applicant shall:

(1) Document that he has no other disqualifying conditions including diabetes-related complications;

(2) Document that he has had no recurring, two (2) or more, hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(3) Document that he has had no recurrent hypoglycemic reactions requiring the assistance of another person within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(4) Document that he has had no recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(5) Document that he has been examined by a board-certified or board-eligible endocrinologist who has conducted a complete medical examination. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

- (a) The date insulin use began;
- (b) Diabetes diagnosis and disease history;
- (c) Hospitalization records;
- (d) Consultation notes for diagnostic examinations;
- (e) Special studies pertaining to the diabetes;
- (f) Follow-up reports;
- (g) Reports of any hypoglycemic insulin reactions within the last five (5) years;
- (h) Two (2) measures of glycosylated hemoglobin, the first ninety (90) days before the last and current measure;
- (i) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken; and
- (j) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

(6) Submit a signed statement from an examining endocrinologist indicating the following medical determinations:

- (a) The endocrinologist is familiar with the applicant's medical history for the past five (5) years, either through actual treatment over that time or through consultation with a physician who has treated the applicant during that time;
- (b) The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage the applicant's diabetes and what procedures should be followed if complications arise; and
- (c) The applicant has the ability and has demonstrated willingness to properly monitor and manage the applicant's diabetes; and

(7) Submit a separate signed statement from an ophthalmologist or optometrist that the applicant has been examined and that the applicant does not have diabetic retinopathy and meets the vision standard in 49 CFR 391.41(b)(10), or has been issued a valid medical exemption. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable advancing

disease of blood vessels in the retina, known as unstable proliferative diabetic retinopathy.

Before entering upon his duties, each school bus driver shall file with the board of trustees a current health certificate. Subsequent health certificates shall be filed with the frequency required by the federal motor carrier safety regulations. School bus drivers shall be physically able to perform all job-related duties.

Each school bus driver shall at all times possess a valid and appropriate commercial driver's license, including endorsements as specified in section 49-105, Idaho Code, and if applicable, a waiver for insulin-dependent diabetes mellitus issued by the state department of education.

Each school bus driver shall maintain such route books and other records as may be required by the state department of education or by the board of trustees of the school district. The school bus driver shall report any pupil whose behavior is such as may endanger the operation of the vehicle, or who damages the same or any part thereof, or whose language is obscene.

It shall be the duty of each school bus driver to report any condition on, or bordering, his route which constitutes a hazard to the safety of the pupils being transported.

The state department of education shall promulgate rules as necessary for the determination of eligibility and issuance of a waiver to individuals with insulin dependent diabetes mellitus in accordance with the provisions of this section. [1963, ch. 13, § 87, p. 27; am. 1982, ch. 92, § 7, p. 169; am. 1985, ch. 107, § 15, p. 191; am. 1989, ch. 88, § 69, p. 151; am. 1993, ch. 56, § 1, p. 153; am. 2000, ch. 426, § 2, p. 1379; am. 2004, ch. 218, § 1, p. 652.]

STATUTORY NOTES

Effective Dates. — Section 70 of S.L. 1989, ch. 88 provided that the act would become effective April 1, 1990.

33-1510. Contracts for transportation service. — (1) All contracts entered into by boards of trustees for the transportation of pupils shall be in writing using the current pupil transportation model contract developed by the state department of education. School districts may attach to the model contract addenda to meet local requirements. School districts shall submit to the state superintendent of public instruction a copy of the pupil transportation contract prior to both parties signing it, for a review of legal requirements and appropriate costs and for final approval. The state superintendent of public instruction shall respond to the school district within twenty-one (21) calendar days of the postmarked receipt of the contract by notifying the school district of contract approval or of recommended or required changes. A school district may appeal to the state board of education any changes the state superintendent requires, in which case the state board may, upon review, approve the contract without such changes.

(2) No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus

transportation service routes at a single time, and contract with the lowest responsible bidder or bidders meeting the specifications; provided that, one (1) time only, a school district may renew a contract with the current contractor if the board of trustees, after renegotiation with the contractor, determines that the terms are satisfactory to the district. The board of trustees may renew the contract for a term not to exceed five (5) years. Renewal of any contract pursuant to this section shall not be granted unless the provisions of this section were included, in a substantially conforming summary, within the bidding notice, published pursuant to section 33-601, Idaho Code, of the contract.

(3) Before entering into such contracts, the board of trustees shall invite bids by twice giving notice as provided in section 33-402 g., Idaho Code, and shall award the contract to the lowest responsible bidder. [1963, ch. 13, § 88, p. 27; am. 1987, ch. 9, § 1, p. 13; am. 1989, ch. 3, § 1, p. 4; am. 1997, ch. 40, § 2, p. 74; am. 1997, ch. 176, § 1, p. 495; am. 2004, ch. 136, § 1, p. 462; am. 2004, ch. 254, § 1, p. 725.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Amendments. — This section was amended by two 1997 acts — ch. 40, § 2 and ch. 176, § 1, both effective July 1, 1997 — which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 40, § 2, in the last paragraph substituted “twice” for “once” following “shall invite bids by” and added “g.” following “section 33-402”.

The 1997 amendment, by ch. 176, § 1, in first paragraph added the third sentence and in the last paragraph substituted “twice” for “once” following “shall invite bids by”.

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 136, design-

nated the first sentence of the section as subsection (1) and substituted “using the current pupil transportation model contract developed by the state department of education” for “in a form approved by the state superintendent of public instruction” in that sentence, and added the second through fifth sentences of that subsection; designated the former second and third sentences of the section as subsection (2); and designated the last sentence as subsection (3).

The 2004 amendment, by ch. 254, added the proviso at the end of the second sentence compiled in present subsection (2) and added the third and fourth sentences compiled in that subsection.

Effective Dates. — Section 2 of S.L. 2004, ch. 254 declared an emergency. Approved March 23, 2004.

JUDICIAL DECISIONS

ANALYSIS

Acceptance of entire bid.
Attorney fees.
Lowest responsible bidder.

Acceptance of Entire Bid.

Where a school district advertised for bids for a pupil transportation contract, where its bid solicitation reserved the right to “accept or reject or select any portion thereof any or all bids and to waive any technicality” and where the bid form had separate lines for bids for each transportation route, the school district properly accepted successful bidder’s entire bid, even when unsuccessful bidder submitted a lower bid on four routes. *Scott v. Buhl Joint*

Sch. Dist. No. 412, 123 Idaho 779, 852 P.2d 1376 (1993).

Attorney Fees.

Where unsuccessful bidder was not seeking relief upon the basis of a contract, but instead upon the basis of a competitive bidding statute, school district and successful bidder were not entitled to attorney fees on appeal pursuant to § 12-120(3). *Scott v. Buhl Joint Sch. Dist. No. 412, 123 Idaho 779, 852 P.2d 1376 (1993).*

Lowest Responsible Bidder.

This section mandates that once bids are received by the board of trustees, it must award the contract to the lowest bidder unless

the lowest bidder is not a "responsible" bidder. *Scott v. Buhl Joint Sch. Dist. No. 412*, 123 Idaho 779, 852 P.2d 1376 (1993).

33-1511. State board of education — Powers and duties related to transportation. — In addition to powers and duties of the state board of education hereinbefore prescribed, the said state board shall:

(1) Designate a member of its staff as supervisor of school transportation responsible for a school bus driver training program and such program shall provide for a qualified driver trainer for each school district and with such duties as the board may prescribe;

(2) Adopt, publish and distribute, and from time to time as need therefor arises amend, minimum standards for the construction of school buses, the basis of which standards shall be those incorporated in the latest report of the National Conference on School Transportation, which report shall be filed with the Idaho state police;

(3) Approve the form(s) to be used for the inspection of school buses;

(4) Authorize the supervisor of school transportation to conduct any combination of in-depth program reviews, fiscal audits, and reviews of annual reimbursement claims supporting documentation of each school district pupil transportation program at a frequency adequate to ensure compliance with state law, accuracy of data and reimbursement claims, and safety of school buses. Priority for selecting districts for review and audit shall be given to those districts that exceed both the most recent annual state average reimbursable cost per mile and the state average reimbursable cost per rider as calculated by the state department of education, unless the supervisor of school transportation determines otherwise;

(5) Authorize the supervisor of school transportation, based upon results of program reviews, fiscal audits, and spot inspections as set forth in section 33-1506, Idaho Code, to provide to school districts a list of required corrective actions, when necessary;

(6) Require school districts to submit progress reports on those corrective actions developed by the supervisor of school transportation to the state department of education at prescribed intervals until deficiencies are corrected or the corrective actions no longer apply;

(7) Withhold all or a portion of a district's pupil transportation reimbursement funding in instances of noncompliance with the requirements of subsection (6) of this section or section 33-1506, Idaho Code, provided that a district may appeal to the state board of education for reconsideration, in which case the state board of education may reinstate or adjust the withheld funds. [1963, ch. 13, § 89, p. 27; am. 1980, ch. 330, § 2, p. 852; am. 1982, ch. 92, § 8, p. 169; am. 1991, ch. 30, § 4, p. 58; am. 1995, ch. 259, § 1, p. 843; am. 2000, ch. 469, § 82, p. 1450; am. 2004, ch. 135, § 1, p. 461.]

STATUTORY NOTES

Compiler's Notes. — The 14th National Congress on School Transportation was held in Warrensburg, Missouri, May 15-19, 2005.

The congress produced the National School Transportation Specifications and Procedures (2005 Edition) which were amended in Au-

gust 2007. See <http://www.ncstonline.org/documents/2005%20NSTSP-V3.pdf>. The next congress is scheduled for May, 2010.

33-1512. Leasing of school buses. — The board of trustees of a school district is hereby authorized to lease school buses. Such leasing agreements may be entered into only when commercial bus transportation is not reasonably available. For any school bus leased, the school district shall charge an amount not less than the school district's current total cost per mile. All revenue in excess of operating costs incurred under the lease received from leasing school buses shall be placed in a fund designated for replacement of school buses.

Whenever any school bus is leased, the lettering designating the vehicle as a school bus shall be covered and concealed and the admonitions to stop while loading and unloading pupils shall not be used in the operation of the vehicle. [I.C., § 33-1512, as added by 1974, ch. 230, § 1, p. 1587; am. 1976, ch. 167, § 1, p. 617; am. 1982, ch. 92, § 9, p. 169.]

33-1513. Pupil transportation support program fund. — (1) In order to promote school transportation safety and awareness in Idaho and to help defray costs associated with Idaho's oversight of the statewide pupil transportation support program, there is hereby created in the state treasury the "Pupil Transportation Support Program Fund" to which shall be credited:

- (a) Moneys as provided by special license plate program fees pursuant to section 49-419D, Idaho Code; and
- (b) All other moneys as may be provided by law; and
- (c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the pupil transportation support program fund.

(2) Moneys in the fund shall be continuously appropriated to the department of education, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used for educational programs promoting school transportation safety and awareness; provided however, the department of education is authorized to retain a portion of the moneys not to exceed ten percent (10%) of annual revenues, to help defray costs associated with the implementation, administration and oversight of the statewide pupil transportation support program. [I.C., § 33-1513, as added by 2004, ch. 301, § 1, p. 841.]

STATUTORY NOTES

Compiler's Notes. — Section 3 of S.L. 2004, ch. 388 also enacted a § 33-1513, which has been redesignated by the compiler as § 33-1514. The redesignation of the section enacted by S.L. 2004, ch. 388 was made per-

manent by S.L. 2005, ch. 25.

Effective Dates. — Section 5 of S.L. 2004, ch. 301 provided that the act should take effect on and after January 1, 2005.

33-1514. Fee — Reimbursement for pupil transportation costs. — The state department of education shall assess an annual fee based on past

reimbursement to school districts, to be paid by all school districts claiming reimbursement for pupil transportation costs, to defray the department's actual cost of providing financial reviews of school district pupil transportation records. Such fees shall be treated, and may be claimed as reimbursable pupil transportation costs, pursuant to the provisions of section 33-1006, Idaho Code. [I.C., § 33-1513, as added by 2004, ch. 388, § 3, p. 1165; am. and redesign. 2005, ch. 25, § 49, p. 82.]

STATUTORY NOTES

Compiler's Notes. — This section was enacted as § 33-1513 by § 3 of S.L. 2004, ch. 388. It was redesignated as § 33-1514 because another § 33-1513 was enacted by S.L.

2004, ch. 301. The redesignation of the section enacted by S.L. 2004, ch. 388 was made permanent by S.L. 2005, ch. 25.

CHAPTER 16

COURSES OF INSTRUCTION

SECTION.

- 33-1601. Instruction in English language.
- 33-1602. United States Constitution — National flag and colors — National anthem — "America" — Citizenship.
- 33-1603. Sectarian instruction forbidden.
- 33-1604. Bible reading in public schools.
- 33-1605. Health and physical fitness — Effects of alcohol, tobacco, stimulants and narcotics.
- 33-1606. Arbor day.
- 33-1607. Americanization education of adults.
- 33-1608. Family life and sex education — Legislative policy.
- 33-1609. "Sex education" defined.

SECTION.

- 33-1610. Involvement of parents and community groups.
- 33-1611. Excusing children from instruction in sex education.
- 33-1612. Thorough system of public schools.
- 33-1613. Safe public school facilities required.
- 33-1613A. Expenditures to abate unsafe or unhealthy conditions.
- 33-1614. Reading assessment.
- 33-1615. Extended year reading intervention program.
- 33-1616. Evaluations and interventions.
- 33-1617. English language learners — Program requirements.
- 33-1618. Assessment exception.

33-1601. Instruction in English language. — Instruction in all subjects in the public schools, except that required for the teaching of foreign languages, shall be conducted in the English language. Provided, however, that for students where the language spoken in their home is not English, instruction may be given in a language other than English as necessary to allow for the transition of the students to the English language. [1963, ch. 13, § 176, p. 27; am. 1980, ch. 140, § 1, p. 305.]

STATUTORY NOTES

Cross References. — Minimum courses prescribed by state board, § 33-118.

33-1602. United States Constitution — National flag and colors — National anthem — "America" — Citizenship. — (1) Instruction in the Constitution of the United States shall be given in all elementary and secondary schools. The state board of education shall adopt such materials as may be deemed necessary for said purpose, and shall also determine the

grades in which such instruction shall be given.

(2) Instruction in the proper use, display and history of and respect for the American flag and the national colors shall be given in all elementary and secondary schools. Such instruction shall include the pledge of allegiance to the flag, the words and music of the national anthem, and of "America."

(3) Every school board of trustees shall cause the United States flag to be displayed in every classroom during the school hours of each school day.

(4) Every public school shall offer the pledge of allegiance or the national anthem in grades one (1) through twelve (12) at the beginning of each school day.

(5) No pupil shall be compelled, against the pupil's objections or those of the pupil's parent or guardian, to recite the pledge of allegiance or to sing the national anthem.

[(6)](3) Instruction in citizenship shall be given in all elementary and secondary schools. Citizenship instruction shall include lessons on the role of a citizen in a constitutional republic, how laws are made, how officials are elected, and the importance of voting and of participating in government. Such instruction shall also include the importance of respecting and obeying statutes which are validly and lawfully enacted by the Idaho legislature and the congress of the United States. [1963, ch. 13, § 177, p. 27; am. 1991, ch. 287, § 1, p. 738; am. 2000, ch. 341, § 1, p. 1145; am. 2000, ch. 468, § 1, p. 1449.]

STATUTORY NOTES

Amendments. — This section was amended by two 2000 acts — ch. 341, § 1 and ch. 468, § 1, both effective July 1, 2000, which have been compiled together.

The 2000 amendment, by ch. 341, § 1, redesignated former subsections a. and b. as present subsections (1) and (2), and added subsection (3)[(6)].

The 2000 amendment, by ch. 468, § 1, redesignated former subsections a. and b. as present subsections (1) and (2), and added subsections (3) through (5).

Federal References. — Federal flag laws are compiled as 4 U.S.C.S. § 1 et seq.

Federal laws as to the national anthem are compiled as 36 U.S.C.S. § 301.

33-1603. Sectarian instruction forbidden. — No sectarian or denominational doctrine shall be taught in the public schools, nor shall any books, tracts, papers or documents of sectarian or denominational character be used therein. [1963, ch. 13, § 178, p. 27.]

STATUTORY NOTES

Cross References. — Books of sectarian nature excluded from school library, § 33-512.

Religious tests, qualifications, and teach-

ings prohibited, Const., Art. IX, § 6.

State university, sectarian and partisan instruction forbidden, § 33-2806.

RESEARCH REFERENCES

A.L.R. — Bible distribution or use in schools — modern cases. 111 A.L.R. Fed. 121.

33-1604. Bible reading in public schools. — Selections from the Bible, to be chosen from a list prepared from time to time by the state board of education, shall be read daily to each occupied classroom in each school district. Such reading shall be without comment or interpretation. Any question by any pupil shall be referred for answer to the pupil's parent or guardian. [1963, ch. 13, § 179, p. 27.]

STATUTORY NOTES

Cross References. — Religious tests, qualifications, and teachings prohibited, Const., Art. IX, § 6.

JUDICIAL DECISIONS

Unconstitutional.

This statute, providing for daily Bible reading in public schools, is in conflict with the First and Fourteenth Amendments of the

United States Constitution and, hence, is unconstitutional, invalid and unenforceable. *Adams v. Engelking*, 232 F. Supp. 666 (D. Idaho 1964).

RESEARCH REFERENCES

A.L.R. — Bible distribution or use in public schools — modern cases. 111 A.L.R. Fed. 121.

33-1605. Health and physical fitness — Effects of alcohol, tobacco, stimulants and narcotics. — In all school districts there shall be instruction in health and physical fitness, including effects of alcohol, stimulants, tobacco and narcotics on the human system. The state board of education shall cause to be prepared such study guides, materials and reference lists as it may deem necessary to make effective the provisions of this section. [1963, ch. 13, § 180, p. 27.]

JUDICIAL DECISIONS

Cited in: *Gano v. School Dist. No. 411*, 674 F. Supp. 796 (D. Idaho 1987).

33-1606. Arbor day. — A day during the month of April in each year, designated as Arbor Day, shall be observed by such exercises as will encourage the planting, preservation and protection of trees and shrubs. [1963, ch. 13, § 181, p. 27.]

STATUTORY NOTES

Cross References. — School holidays, § 33-512.

33-1607. Americanization education of adults. — The board of trustees of any school district is authorized to provide instruction for Americanization of adult residents of the state, including classes in reading, writing and speaking the English language; the principles of the Constitu-

tion of the United States, American history, and such other subjects as deemed desirable for making, of such adults, better American citizens. The expense of such instruction shall be a lawful charge against the maintenance and operation funds of the district. [1963, ch. 13, § 182, p. 27.]

33-1608. Family life and sex education — Legislative policy. — The legislature of the state of Idaho believes that the primary responsibility for family life and sex education, including moral responsibility, rests upon the home and the church and the schools can only complement and supplement those standards which are established in the family. The decision as to whether or not any program in family life and sex education is to be introduced in the schools is a matter for determination at the local district level by the local school board of duly selected representatives of the people of the community. If such program is adopted, the legislature believes that:

- a. Major emphasis in such a program should be to assist the home in giving them the knowledge and appreciation of the important place the family home holds in the social system of our culture, its place in the family and the responsibility which will be there much later when they establish their own families.
- b. The program should supplement the work in the home and the church in giving youth the scientific, physiological information for understanding sex and its relation to the miracle of life, including knowledge of the power of the sex drive and the necessity of controlling that drive by self-discipline.
- c. The program should focus upon helping youth acquire a background of ideals and standards and attitudes which will be of value to him now and later when he chooses a mate and establishes his own family. [1970, ch. 119, § 1, p. 282.]

RESEARCH REFERENCES

A.L.R. — Validity of sex education programs in public schools. 82 A.L.R.3d 579.

33-1609. "Sex education" defined. — Sex education for the purpose of this act is defined as the study of the anatomy and the physiology of human reproduction. [1970, ch. 119, § 2, p. 282.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1970, ch. 119, compiled as §§ 33-1608 — 33-1611.

33-1610. Involvement of parents and community groups. — School districts shall involve parents and school district community groups in the planning, development, evaluation and revision of any instruction in sex education offered as a part of this new program. [1970, ch. 119, § 3, p. 282.]

33-1611. Excusing children from instruction in sex education. —

Any parent or legal guardian who wishes to have his child excused from any planned instruction in sex education may do so upon filing a written request to the school district board of trustees and the board of trustees shall make available the appropriate forms for such request. Alternative educational endeavors shall be provided for those excused. [1970, ch. 119, § 4, p. 282.]

33-1612. Thorough system of public schools. — The constitution of the state of Idaho, section 1, article IX, charges the legislature with the duty to establish and maintain a general, uniform and thorough system of public, free common schools. In fulfillment of this duty, the people of the state of Idaho have long enjoyed the benefits of a public school system, supported by the legislature, which has recognized the value of education to the children of this state.

In continuing recognition of the fundamental duty established by the constitution, the legislature finds it in the public interest to define thoroughness and thereby establish the basic assumptions which govern provision of a thorough system of public schools.

A thorough system of public schools in Idaho is one in which:

1. A safe environment conducive to learning is provided;
2. Educators are empowered to maintain classroom discipline;
3. The basic values of honesty, self-discipline, unselfishness, respect for authority and the central importance of work are emphasized;
4. The skills necessary to communicate effectively are taught;
5. A basic curriculum necessary to enable students to enter academic or professional-technical postsecondary educational programs is provided;
6. The skills necessary for students to enter the work force are taught;
7. The students are introduced to current technology; and
8. The importance of students acquiring the skills to enable them to be responsible citizens of their homes, schools and communities is emphasized.

The state board shall adopt rules, pursuant to the provisions of chapter 52, title 67, Idaho Code, and section 33-105(3), Idaho Code, to establish a thorough system of public schools with uniformity as required by the constitution, but shall not otherwise impinge upon the authority of the board of trustees of the school districts. Authority to govern the school district, vested in the board of trustees of the school district, not delegated to the state board, is reserved to the board of trustees. Fulfillment of the expectations of a thorough system of public schools will continue to depend upon the vigilance of district patrons, the dedication of school trustees and educators, the responsiveness of state rules, and meaningful oversight by the legislature. [I.C., § 33-1612, as added by 1994, ch. 25, § 1, p. 38; am. 1999, ch. 329, § 4, p. 852.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1994, ch. 448, provided, in part: "All rules for the public schools of the state board of educa-

tion, IDAPA 08.02, chapters 01 through 07, that were in effect as of April 1, 1994, that are not otherwise repealed by the state board of

education or the legislature, shall be null and void effective April 1, 1996.

"It is the intent of the legislature that the state board of education shall undertake a complete evaluation of all rules relating to the public schools to determine whether and how

those rules promote a thorough system of education as described in section 33-1612, Idaho Code, (1994 Senate Bill 1291) and shall draft and promulgate new rules if necessary and consistent with a thorough system of education."

JUDICIAL DECISIONS

Duty of Legislature.

The legislature is required to provide a means for school districts to fund facilities that provide a safe environment conducive to

learning. Idaho Sch. for Equal Educ. Opportunity v. State, 132 Idaho 559, 976 P.2d 913 (1999).

33-1613. Safe public school facilities required. — (1) Definition. As used in this section, "public school facilities" means the physical plant of improved or unimproved real property owned or operated by a school district, a charter school, or a school for children in any grades kindergarten through twelve (12) that is operated by the state of Idaho, including school buildings, administration buildings, playgrounds, athletic fields, etc., used by schoolchildren or school personnel in the normal course of providing a general, uniform and thorough system of public, free common schools, but does not include areas, buildings or parts of buildings closed from or not used in the normal course of providing a general, uniform and thorough system of public, free common schools. The aspects of a safe environment conducive to learning as provided by section 33-1612, Idaho Code, that pertain to the physical plant used to provide a general, uniform and thorough system of public, free common schools are hereby defined as those necessary to comply with the safety and health requirements set forth in this section.

(2) Inspection. It is the duty of the board of trustees of every school district and the governing body for other schools described in subsection (1) of this section at least once in every school year to require an independent inspection of the school district's or other entity's school facilities to determine whether those school facilities comply with codes addressing safety and health standards for facilities, including electrical, plumbing, mechanical, elevator, fire safety, boiler safety, life safety, structural, snow loading, and sanitary codes, adopted by or pursuant to the Idaho uniform school building safety act, chapter 80, title 39, Idaho Code, adopted by the state fire marshal, adopted by generally applicable local ordinances, or adopted by rule of the state board of education and applicable to school facilities. The inspection shall be done pursuant to chapter 80, title 39, Idaho Code, or by an independent inspector professionally qualified to conduct inspections under the applicable code. The results of the inspection shall be presented to the administrator of the division of building safety and the board of trustees or other governing body for its review and consideration.

(3) Abatement required — Reporting. The board of trustees or other governing body shall require that the unsafe or unhealthy conditions be abated and shall instruct the school district's or other entity's personnel to take necessary steps to abate unsafe or unhealthy conditions. The board of

trustees or other governing body must issue a report in the same school year in which the inspections are made declaring whether any unsafe or unhealthy conditions identified have not been abated. The state board of education shall, by rule, provide for uniform reporting of unsafe and unhealthy conditions and for uniform reporting of abatement or absence of abatement of unsafe and unhealthy conditions. Copies of such reports shall be provided to the administrator of the division of building safety and the board of trustees of the school district.

(4) Costs of and plan of abatement. If the school district or other entity described in subsection (1) of this section can abate all unsafe or unhealthy conditions identified with the funds available to the school district or other entity, it shall do so, and it need not separately account for the costs of abatement nor segregate funds expended for abatement. If the school district or other entity cannot abate all unsafe or unhealthy conditions identified with the funds available to it, the board of trustees or other governing body shall direct that a plan of abatement be prepared. The plan of abatement shall provide a timetable that shall begin no later than the following school year and that shall provide for abatement with all deliberate speed of unsafe and unhealthy conditions identified. The abatement plan shall be submitted to the administrator of the division of building safety. The school district or other entity shall immediately begin to implement its plan of abatement and must separately account for its costs of abatement of unsafe and unhealthy conditions and separately segregate funds for the abatement of unsafe and unhealthy conditions as required by subsection (5) of this section.

(5) Special provisions for implementation of plan of abatement.

(a) Notwithstanding any other provisions of law concerning expenditure of lottery moneys distributed to the school district or other entity, all lottery moneys provided to the school district or other entity for a school year in which the school district cannot abate unsafe or unhealthy conditions identified and not legally encumbered to other uses at the time and all lottery moneys for following school years shall be segregated and expended exclusively for abatement of unsafe and unhealthy conditions identified until all of the unhealthy and unsafe conditions identified are abated, provided, if the school district has obtained a loan from the [school] safety and health revolving loan and grant fund, the provisions of section 33-1017, Idaho Code, and the conditions of the loan shall determine the use of the school district's lottery moneys during the term of the loan.

(b) If the lottery moneys referred to in paragraph (a) of this subsection will, in the board of trustees' or other governing bodies' estimation, be insufficient to abate the unsafe and unhealthy conditions identified, the plan of abatement shall identify additional sources of funds to complete the abatement of the unsafe and unhealthy conditions. The board of trustees may choose from among the following sources, or from other sources of its own identification, but the plan of abatement must identify sufficient sources of funds for abatement.

(i) If the school district is not levying under chapter 8, title 33, Idaho Code, at the maximum levies allowed by law for levies that may be

imposed by a board of trustees without an election, the board of trustees may increase any of those levies as allowed by law for the school year following the school year in which it was unable to abate unsafe or unhealthy conditions identified.

(ii) If the school district is levying under chapter 8, title 33, Idaho Code, at the maximum levies allowed by law for levies that may be imposed by the board of trustees without an election; or, if after increasing those levies to the maximum levies allowed by law for levies that may be imposed by the board of trustees without an election, there will still be insufficient funds to abate unsafe or unhealthy conditions identified, the school district, after giving notice and conducting a hearing, may declare a financial emergency and/or may apply for a loan or, if eligible, an interest grant from the [school] safety and health revolving loan and grant fund as provided in section 33-1017, Idaho Code, to obtain funds to abate the unsafe or unhealthy conditions identified.

(iii) Upon the declaration of a financial emergency, the board of trustees shall have the power to impose a reduction in force, to freeze some or all salaries in the school district, and/or to suspend some or all contracts that may be legally suspended upon the declaration of a financial emergency; provided, that when a board of trustees declares a financial emergency, or when a declaration of a financial emergency is imposed by the state treasurer pursuant to section 33-1017, Idaho Code, and there is a reduction in force, some or all salaries are frozen, or some contracts are suspended, the payments to the school district under the foundation program of chapter 10, title 33, Idaho Code, and in particular the staff allowances under that chapter, shall not be reduced during the duration of the financial emergency as a result of a reduction in force, frozen salaries, or suspended salaries from what the staff allowance would be without the reduction in force, frozen salaries or suspended contracts.

(c) All costs of abatement for a program implementing plans of abatement under subsection (5) of this section must be separately accounted for and documented with regard to abatement of each unsafe or unhealthy condition identified. Funds obtained under section 33-1017, Idaho Code, must be used exclusively to abate unsafe or unhealthy conditions identified. Funds obtained pursuant to section 33-1017, Idaho Code, in excess of funds necessary to abate unsafe or unhealthy conditions identified must be returned as provided in section 33-1017, Idaho Code. Return of these funds shall be judicially enforceable as provided in section 33-1017, Idaho Code. [I.C., § 33-1613, as added by 2000, ch. 219, § 1, p. 607; am. 2001, ch. 326, § 3, p. 1143; am. 2002, ch. 158, § 1, p. 458.]

STATUTORY NOTES

Cross References. — Administrator of division of building safety, § 67-2601A.

Compiler's Notes. — The word "school" has been added in brackets by the compiler in paragraphs (5)(a) and (5)(b)(ii) to correct the name of the referenced fund.

Effective Dates. — Section 3 of S.L. 2000, ch. 219 declared an emergency retroactively to January 1, 2000 and approved April 12, 2000.

Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.

33-1613A. Expenditures to abate unsafe or unhealthy conditions.

— Expenditures to abate unsafe or unhealthy conditions in public school facilities are ordinary and necessary expenses authorized by the general laws of this section within the meaning of section 3, article VIII, of the constitution of the state of Idaho. The general laws of this state authorizing such expenditures include, but are not limited to: the laws relating to expenditures of proceeds of a school district's sale of real or personal property pursuant to chapter 6, title 33, Idaho Code; a school district's collection and expenditure of levies provided by chapter 9, title 33, Idaho Code; a school district's expenditures of state funds provided under the foundation program of chapter 10, title 33, Idaho Code; a school district's expenditures of bond proceeds under chapter 11, title 33, Idaho Code; a school district's expenditures for providing safe transportation pursuant to chapter 15, title 33, Idaho Code; a school district's expenditures of proceeds of loans or grants procured pursuant to section 33-1613, Idaho Code, including previous amendments of section 33-1613, Idaho Code; and a school district's expenditures of forest reserve and mining impact funds pursuant to chapter 13, title 57, Idaho Code. The definitions contained in section 33-1613, Idaho Code, apply to this section. [I.C., § 33-1613A, as added by 2003, ch. 270, § 2, p. 721.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2003, ch. 270 declared an emergency. Approved April 8, 2003.

33-1614. Reading assessment. — The state department of education shall be responsible for administration of all assessment efforts, train assessment personnel and report results.

(1) In continuing recognition of the critical importance of reading skills, and after an appropriate phase-in time as determined by the state board of education, all public school students in kindergarten and grades one (1), two (2) and three (3) shall have their reading skills assessed. For purposes of this assessment, the state board approved and research-based "Idaho Comprehensive Literacy Plan" shall be the reference document. The kindergarten assessment shall include reading readiness and phonological awareness. Grades one (1), two (2) and three (3) shall test for fluency and accuracy of the student's reading. The assessment shall be by a single statewide test specified by the state board of education, and the state department of education shall ensure that testing shall take place not less than two (2) times per year in the relevant grades. Additional assessments may be administered for students in the lowest twenty-five percent (25%) of reading progress. The state K-3 assessment test results shall be reviewed by school personnel for the purpose of providing necessary interventions to sustain or improve the students' reading skills. Results shall be maintained and compiled by the state department of education and shall be reported annually to the state board, legislature and governor and made available to the public in a consistent manner, by school and by district.

(2) The scores of the tests and interventions recommended and implemented shall be maintained in the permanent record of each student.

(3) The administration of the state K-3 assessments is to be done in the local school districts by individuals chosen by the district other than the regular classroom teacher. All those who administer the assessments shall be trained by the state department of education.

(4) It is legislative intent that curricular materials utilized by school districts for kindergarten through grade three (3) shall align with the "Idaho Comprehensive Literacy Plan." [I.C., § 33-1614, as added by 1999, ch. 295, § 1, p. 743.]

33-1615. Extended year reading intervention program. — The board of trustees of each school district shall establish an extended year state board approved reading program for students identified as below grade level on reading assessments in kindergarten through grade three (3). The program shall be the equivalent of forty (40) hours of instruction. Subject to an amount appropriated, instructional costs of the extended year reading intervention program shall be reimbursed by the state, with the exception of transportation which shall be reimbursed at an amount not to exceed thirty dollars (\$30.00) per student per session. For the purpose of program reimbursement, the state department of education shall adopt reporting forms, establish reporting dates, and adopt such additional guidelines and standards as necessary to accomplish the program goals that every child will read fluently and comprehend printed text on grade level by the end of the third grade. Districts shall apply for an intervention program reimbursement based on a reporting procedure developed and administered by the state department of education. Intervention program participation and effectiveness by school and district shall be presented annually to the state board, the legislature and the governor. [I.C., § 33-1615, as added by 1999, ch. 296, § 1, p. 744.]

33-1616. Evaluations and interventions. — Reports shall be submitted by the school districts in such a manner that it is possible to determine for each school building in each school district the percentage of students who are achieving at or above the appropriate grade level on the reading assessment. In order to maintain the commitment made by the legislature to reading excellence, the statewide goal for reading achievement for spring 2004 shall be not less than fifty-five percent (55%) at or above grade level for kindergarten and not less than sixty percent (60%) at or above grade level for first grade; the goal for spring 2005 shall be not less than fifty-five percent (55%) at or above grade level for kindergarten, not less than sixty-five percent (65%) at or above grade level for first grade, and not less than seventy percent (70%) at or above grade level for second grade; the goal for spring 2006 shall be not less than sixty percent (60%) at or above grade level for kindergarten, not less than seventy percent (70%) at or above grade level for first grade, not less than eighty percent (80%) at or above grade level for second grade and not less than eighty-five percent (85%) at or above grade level for third grade. Notwithstanding the statewide reading achieve-

ment goals provided herein, an individual school building will also be deemed to have met the achievement goal if the percentage reading at or above grade level is five percent (5%) or more greater than the percentage for the immediately preceding fall scores. For purposes of this section, the calculations shall be based on students who were enrolled ninety percent [(90%)] of the possible total days of attendance at that school between the fall and spring reading test within that same school year.

The state department of education shall extract data from the reporting forms, after the spring assessment period, and specifically identify those schools whose average reading scores for any grade level have not met the targeted level by the specified date. The department shall prepare a list of these schools and the grade or grades not attaining the achievement goal. This list shall be made available for the public, shall be published in the next issue of the state publication of the department and may be made available on the internet following the spring assessment. In addition, each school so identified shall be notified by the department that should the school experience a similar shortfall in the next ensuing year, a school intervention program may be initiated. The state department of education shall provide for an intervention program which will consist of at least, but not limited to, a site visit by designated personnel from schools that have achieved the state standard and may include others who are familiar with reading achievement. The intervention team shall make recommendations to the district on means for improvement in order to meet and exceed the state's reading goals. [I.C., § 33-1616, as added by 2001, ch. 390, § 1, p. 1369; am. 2002, ch. 303, § 1, p. 866.]

STATUTORY NOTES

Compiler's Notes. — The bracketed parentheses around "90%" in the last sentence of the first paragraph were inserted by the compiler.

33-1617. English language learners — Program requirements. —

It is legislative intent that the state board of education and state department of education develop statewide, research-based goals for students in Idaho who are English language learners. Goals shall specifically address compliance with applicable state and federal law and court decisions.

The board of trustees of each school district shall formulate a plan in sufficient detail that measurable objectives can be identified and addressed which will accomplish English language acquisition and improved academic performance. Moneys distributed to school districts based upon the population of limited-English proficiency students and distributed to school districts to support programs for students with non-English or limited-English proficiency shall be utilized in support of the district plan.

The district plan and allocation of funds shall be part of a report made annually to the state board of education and state department of education. The state board of education shall provide a summary of these reports to the legislature. Recommendations for program enhancements needed to reach the statewide goals are to be brought to the legislature after review and

approval by the state board of education. [I.C., § 33-1617, as added by 2004, ch. 349, § 1, p. 1041.]

33-1618. Assessment exception. — A student who has not been enrolled for two (2) full school years in an elementary or secondary school in the United States and who scores less than a level four (4) on the state assessment used to determine English language proficiency may be excluded from requirements to participate in Idaho’s direct writing assessment and in Idaho’s direct mathematics assessment if the parent or guardian of such student and the student’s teacher agree that such an exclusion is educationally appropriate for the student. [I.C., § 33-1618, as added by 2006, ch. 357, § 1, p. 1090.]

STATUTORY NOTES

Compiler’s Notes. — Idaho’s direct writing and mathematics assessments were developed by a grade-level steering committee. See <http://www.sde.idaho.gov/contentstandards>.

CHAPTER 17

DRIVER TRAINING COURSES

| SECTION. | SECTION. |
|--|---|
| 33-1701. Driver training courses. | 33-1707. Reimbursement — Determination — Certification. |
| 33-1702. Minimum standards for courses. | 33-1708. Administration — State supervisor of driver training — Employees — Expenses. |
| 33-1703. Eligible pupils — Time courses offered. | |
| 33-1704. Authorization to operate program. | |
| 33-1705. Two or more districts cooperating. | |
| 33-1706. Reports to state department of education. | |

33-1701. Driver training courses. — In conjunction with its supervision of traffic on public highways, the Idaho transportation department is directed to cooperate with the state board of education in its establishment of driver training courses in the public schools of the state. [1963, ch. 13, § 165, p. 27; am. 1992, ch. 115, § 42, p. 345.]

STATUTORY NOTES

Cross References. — Commercial driver training schools, § 49-2101 et seq.

RESEARCH REFERENCES

A.L.R. — Liability, for personal injury or property damage, for negligence in teaching or supervision of learning driver. 5 A.L.R.3d 271.

33-1702. Minimum standards for courses. — (1) The state board of education and the transportation department shall cooperate in establishing, and amending as need arises, minimum standards for driver training programs reimbursable hereunder.

(2) Such standards shall require not less than thirty (30) clock hours of classroom instruction, six (6) hours observation time in a driver training car, and six (6) hours behind-the-wheel practice driving; but the state board of education may allow in lieu of not more than three (3) hours of such practice driving, such equivalent thereof in simulated practice driving as the said board may have, by uniform rules, approved. The board shall adopt standards necessary to allow completion of the thirty (30) clock hours of required classroom instruction through an approved correspondence course. [1963, ch. 13, § 166, p. 27; am. 1994, ch. 347, § 1, p. 1098; am. 1997, ch. 41, § 1, p. 77; am. 1998, ch. 110, § 3, p. 375; am. 2000, ch. 214, § 1, p. 583; am. 2004, ch. 223, § 1, p. 664.]

33-1703. Eligible pupils — Time courses offered. — Reimbursable programs shall be open to all residents of the state, of the ages fourteen and one-half (14 1/2) through twenty-one (21) years whether or not they are enrolled in a public, private or parochial school. Residents living within any school district operating, or participating in the operation of, an authorized driver training program, shall enroll, when possible, in the training program offered in the school district of residence.

No charge or enrollment fee, not required to be paid by public school pupils for driver training, shall be required to be paid by residents not then attending public schools.

Driver training programs herein authorized may, at the discretion of the board of trustees, be conducted after school hours, or on Saturdays, or during regular school vacations. [1963, ch. 13, § 167, p. 27; am. 1965, ch. 153, § 1, p. 297; am. 1992, ch. 246, § 1, p. 723; am. 2000, ch. 214, § 2, p. 583.]

33-1704. Authorization to operate program. — The board of trustees of any school district proposing to establish an authorized driver training program shall, as a condition of reimbursement for costs incurred in the driver training program, not less than thirty (30) days prior to the proposed commencement thereof, submit to the state department of education the plan therefor. The state department shall approve or disapprove such plan within ten (10) days after receipt from the district of the proposal, and shall give written notice of its decision to said board of trustees. Any school district which operates any driver training program without prior written approval from the state department of education shall not be entitled to reimbursement, as provided in section 33-1707, Idaho Code, for the unapproved plan, or the unapproved portions of any plan. [1963, ch. 13, § 168, p. 27; am. 1972, ch. 15, § 1, p. 19; am. 1985, ch. 107, § 16, p. 191.]

33-1705. Two or more districts cooperating. — Two (2) or more school districts may, by written agreement, offer a driver training program jointly. In such case the plan shall be submitted by one (1) of the districts which shall be designated as the operating district; and upon approval of the plan, all reports and apportionments of funds shall be made as though the designated operating district were the only district operating the program.

The absence of a written agreement, however, shall not limit the board of trustees of any school district in accepting enrollments in its driver training program on the part of residents in neighboring school districts. [1963, ch. 13, § 169, p. 27; am. 1965, ch. 153, § 2, p. 297.]

33-1706. Reports to state department of education. — Each school district which has completed a course or courses in driver training, whether approved for reimbursement or not, shall submit a report to the state department of education not later than forty-five (45) days after completion of the course or courses, showing (1) the number of pupils who enrolled; (2) the number of pupils who completed the course; and (3) the total cost of operation of the program, together with such other information as the state board may require. Failure to submit reports to the state department of education shall be cause for the state department of education to disallow reimbursement even for prior approved driver training program. [1963, ch. 13, § 170, p. 27; am. 1972, ch. 15, § 2, p. 19; am. 1973, ch. 18, § 1, p. 38; am. 1985, ch. 107, § 17, p. 191.]

33-1707. Reimbursement — Determination — Certification. — a. From the data provided by the school district, as required by section 33-1706, Idaho Code, the state department of education shall compute the average of the number of pupils enrolling in the course and those completing the same, and determine for such average number, the per-pupil cost thereof.

The amount due the district from the driver training fund in the state treasury shall be the total cost of operating the program, or the average of the number enrolling in the course and those completing the same, multiplied by one hundred twenty-five dollars (\$125), whichever is the lesser.

b. On or before the fifteenth day of February, and the thirtieth day of June, and the fifteenth day of September in each year, the state superintendent of public instruction shall certify to the state controller a list of school districts having submitted the reports required in section 33-1706, Idaho Code, and the amount of money due to each as computed under the provisions of subsection a. of this section. The state controller shall draw his warrants against the driver training account in the state treasury, in favor of the several districts entitled thereto, in the amount so certified. Annually, not later than the first day of September in each year, the state superintendent of public instruction shall cause the supervisor of driver training to prepare a report listing the names of the school districts having submitted the reports as required in section 33-1706, Idaho Code, and the amounts of money paid each as computed under the provisions of subsection a. of this section. [1963, ch. 13, § 171, p. 27; am. 1967, ch. 128, § 1, p. 296; am. 1972, ch. 284, § 1, p. 716; am. 1973, ch. 18, § 2, p. 38; am. 1975, ch. 213, § 1, p. 593; am. 1976, ch. 117, § 1, p. 455; am. 1980, ch. 63, § 1, p. 128; am. 1981, ch. 302, § 1, p. 624; am. 1982, ch. 78, § 1, p. 145; am. 1985, ch. 239, § 1, p. 567; am. 1988, ch. 159, § 1, p. 289; am. 1992, ch. 245, § 1, p. 723; am. 1994, ch. 180, § 46, p. 420; am. 1995, ch. 279, § 1, p. 939; am. 1996, ch. 27, § 1, p. 66; am. 2004, ch. 57, § 1, p. 267.]

STATUTORY NOTES

Cross References. — Driver training account, § 49-308.

State controller, § 67-1001 et seq.

State superintendent of public instruction, § 67-1501 et seq.

State supervisor of driver training, § 33-1708.

Effective Dates. — Section 2 of S.L. 1972, ch. 284 provided the act should take effect on and after July 1, 1972.

Section 241 of S.L. 1994, ch. 180 provided:

"This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller." Since such amendment was adopted, the amendment to this section by § 46 of S.L. 1994, ch. 180 became effective January 2, 1995.

33-1708. Administration — State supervisor of driver training — Employees — Expenses. — The state superintendent of public instruction shall administer the driver training fund. The state board of education shall employ within its department of education a state supervisor of driver training, who shall be a full-time employee, and such other supervisory and clerical help as may be deemed necessary, to effectuate the provisions hereof. The state superintendent of public instruction shall cause to be maintained an accurate, current, and complete record of all costs of administering and supervising the driver training program in the state. Annually, not later than the first day of September, the state superintendent of public instruction shall cause the supervisor of driver training to prepare a report showing the actual expenses incurred in administering and supervising the driver training program during the preceding fiscal year ending June 30. [1963, ch. 13, § 172, p. 27; am. 1967, ch. 128, § 2, p. 296; am. 1972, ch. 15, § 3, p. 19; am. 1973, ch. 18, § 3, p. 38; am. 1974, ch. 10, § 10, p. 49; am. 1985, ch. 107, § 18, p. 191.]

STATUTORY NOTES

Cross References. — Driver training account, § 49-308.

State superintendent of public instruction, § 67-1501 et seq.

Effective Dates. — Section 21 of S.L. 1974, ch. 10, provided the act should be in full force and effect on and after July 1, 1974.

CHAPTER 18

SAFETY PATROLS

SECTION.

33-1801. School safety patrols.

33-1802. Purchase of uniforms, equipment, insurance.

SECTION.

33-1803. Failure to obey safety patrol member unlawful.

33-1801. School safety patrols. — The board of trustees of any school district, including chartered school districts, or other officer or board performing like functions with respect to any private or parochial school or schools, may authorize its administrative officers to create, maintain and supervise a school safety patrol or patrols, and to establish regulations for the management and conduct thereof not inconsistent with this act. Such administrative officers may cause to be appointed from the student body of

any such school, students who shall be known as members of such school safety patrol, and who shall serve without compensation and at the pleasure of the authority making the appointment.

The members of such school safety patrol shall wear a badge or other appropriate insignia marked "school patrol" when in performance of their duties, and they may display "stop" or other proper traffic directional signs or signals at school crossings or other points where school children are crossing or about to cross a public street or highway, but members of the school patrol shall be subordinate to and obey the orders of any peace officer present and having jurisdiction. [1963, ch. 13, § 173, p. 27.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1963, ch. 13, compiled throughout title 33, Idaho Code.

JUDICIAL DECISIONS

Construction.

This statute is permissive in that it states a school board "may" authorize safety patrols and, therefore, does not impose a mandatory duty upon the school districts. *Rife v. Long*, 127 Idaho 841, 908 P.2d 143 (1995).

Cited in: *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

33-1802. Purchase of uniforms, equipment, insurance. — Any school district maintaining any school patrol may purchase uniforms and other appropriate insignia, traffic signs, or other materials, all to be used by members of such school safety patrol while in the performance of their duties. Such school districts may pay for the uniforms and equipment mentioned above out of the funds of the district.

Boards of trustees are authorized to purchase life and accident, or casualty, insurance covering members of the school safety patrol while engaged in the performance of their duties, and indemnifying the district, and its officers, and any employees who direct or supervise the school safety patrol, according to the provisions of chapter 35 of title 41 [, Idaho Code]. [1963, ch. 13, § 174, p. 27.]

33-1803. Failure to obey safety patrol member unlawful. — It shall be unlawful for the operator of any vehicle to fail to stop his vehicle when directed so to do by a member of a school safety patrol while in the performance of his duty and wearing the appropriate insignia; and it shall further be unlawful for the operator of any vehicle to disregard any other reasonable directions of a member of the school safety patrol while properly identified and performing his duties as such.

A member of the school safety patrol while on duty may properly report to any peace officer any violation of the foregoing paragraph by the operator of any vehicle. [1963, ch. 13, § 175, p. 27.]

CHAPTER 19

FRATERNITIES — RESTRICTIONS

SECTION.

33-1901. Fraternities, sororities, and secret societies prohibited in elementary and secondary schools.

SECTION.

33-1902. Fraternity, sorority or secret society defined — Exceptions.

33-1903. Enforcement.

33-1901. Fraternities, sororities, and secret societies prohibited in elementary and secondary schools. — It shall be unlawful for any person, group or organization to establish a fraternity, sorority or other secret society whose membership is comprised in whole or in part of pupils enrolled in the public elementary or secondary schools of the state, or to solicit a pupil in any such school to become a member of such organization; and no pupil enrolled in the public elementary or secondary schools shall be or become a member, or pledge himself to become a member of any such organization. [1963, ch. 13, § 63, p. 27.]

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of statutes or regulations concerning recreational or social activities of pupils of public schools. 10 A.L.R.3d 389.

33-1902. Fraternity, sorority or secret society defined — Exceptions. — For the purpose of the preceding section a fraternity, sorority or secret society shall be interpreted as any organization the active membership of which is comprised in whole or in part of pupils enrolled in public elementary or secondary schools, and which exists or perpetuates itself wholly or partly by selecting members on the basis of the decision of its membership rather than upon the basis of the right of any pupil, qualified by the rules and regulations of the school, to be a member. The definition shall not be construed to include organizations institutionally sponsored by agencies of public welfare, such as the Boy Scouts of America, Girl Scouts of America, Campfire Girls, DeMolay, the YMCA and YWCA, and similar organizations. [1963, ch. 13, § 64, p. 27.]

33-1903. Enforcement. — The board of trustees of any school district is authorized to enforce the provisions of sections 33-1901 through 33-1902 by withdrawal of the rights and privileges of the school, denial of graduation, deprivation of credit, suspension or expulsion of any pupil found to be in violation of the provisions of said sections. [1963, ch. 13, § 65, p. 27.]

CHAPTER 20

EDUCATION OF EXCEPTIONAL CHILDREN

SECTION.

33-2001. Definitions.

33-2002. Responsibility of school districts for education of children with disabilities.

33-2002A. [Amended and Redesignated.]

SECTION.

33-2003. Responsibility of school districts for education of gifted/talented children.

33-2004. Contracting by approved form for education by another school

SECTION.

district, approved rehabilitation center or hospital, or a corporation.

33-2005. Additional disbursement.

33-2005A. [Repealed.]

33-2006. Education of certain expectant or delivered mothers.

33-2007. Cost of instruction and postage subject to reimbursement.

SECTION.

33-2008. Outpatients.

33-2009. Education of children housed in juvenile detention facilities.

33-2010. Education of disabled adult students housed in adult correctional facilities.

33-2001. Definitions. — 1. “Ancillary personnel” means those persons who render special services to exceptional children in regular or in addition to regular or special class instruction as defined by the state board of education.

2. “Exceptional children” mean both children with disabilities and gifted/talented children with regard to funding for school districts.

3. “Children with disabilities” mean those children with mental retardation, hearing impairments, deafness, speech or language impairments, visual impairments, blindness, deaf-blindness, serious emotional disturbance, orthopedic impairments, severe or multiple disabilities, autism, traumatic brain injury, developmental delay or specific learning disabilities, and who by reason of the qualifying disability requires special education and related services.

4. “Gifted/talented children” mean those students who are identified as possessing demonstrated or potential abilities that give evidence of high performing capabilities in intellectual, creative, specific academic or leadership areas, or ability in the performing or visual arts and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.

5. “Special education” or “special instructional service” means specially designed instruction or a related service at no cost to the parents, to meet the unique needs of an exceptional child. [I.C., § 2002A, as added by 1965, ch. 228, § 3, p. 542; am. 1974, ch. 127, § 1, p. 1305; am. and redesisg. 1991, ch. 323, § 3, p. 839.]

STATUTORY NOTES

Compiler’s Notes. — This section was redesignated as § 33-2002 by § 4 of S.L. formerly compiled as § 33-2002A. 1991, ch. 323.
Former section 33-2001 was amended and

33-2002. Responsibility of school districts for education of children with disabilities. — (1) Each public school district is responsible for and shall provide for the special education and related services of children with disabilities enrolled therein.

(2) Every public school district in the state shall provide instruction and training for persons between the ages of three (3) years and twenty-one (21) years who are children with disabilities as defined in this chapter and by the state board of education. The state board of education shall through its department of education determine eligibility criteria for children with disabilities, qualifications of special teachers and special personnel, pro-

grams of instruction and minimum standards for classrooms and equipment to be used in administering the provisions of this act.

(3) The child study team shall assess the importance and necessity of teaching Braille to each child who is legally blind. Preference shall be given to Braille. If the child study team determines that learning Braille is important with respect to a particular child, the child shall be given the opportunity to learn Braille.

(4) In accordance with the provisions of part B of the federal individuals with disabilities education act (IDEA), a student with a disability shall be informed by the school district or other public agency providing education to the student, at least one (1) year before he reaches the age of majority, that rights currently afforded to the parents or guardian of the student pursuant to IDEA, will transfer to the student when he reaches the age of majority. However, such rights shall remain with the parent or guardian after the student reaches the age of majority if the student is determined to be incompetent under Idaho law or if an individualized education program team determines the student lacks the ability to provide informed consent with respect to his educational program. [1963, ch. 13, § 183, p. 27; am. 1963, ch. 219, § 1, p. 628; am. 1965, ch. 228, § 1, p. 542; am. 1972, ch. 312, § 1, p. 774; am. 1974, ch. 10, § 11, p. 49; am. and redesign. 1991, ch. 323, § 4, p. 839; am. 1993, ch. 134, § 1, p. 330; am. 1998, ch. 24, § 1, p. 139.]

STATUTORY NOTES

Prior Laws. — Former § 33-2002, which comprised 1963, ch. 13, § 184, p. 27; am. 1963, ch. 270, § 1, p. 690; am. 1965, ch. 228, § 2, p. 542, was repealed by S.L. 1991, ch. 323, § 2, effective July 1, 1991.

Federal References. — Part B of the federal individuals with disabilities act, re-

ferred to in subsection (4), is codified as 20 USCS § 1411 et seq.

Compiler's Notes. — This section was formerly compiled as § 33-2001.

The term "this act", at the end of subsection (2), refers to S.L. 1963, Chapter 219, which is presently compiled only in this section.

RESEARCH REFERENCES

A.L.R. — What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400 et seq.). 161 A.L.R. Fed. 1.

Availability of damages in action to remedy violations of Individuals with Disabilities Ed-

ucation Act (20 U.S.C. §§ 1400 et seq.). 165 A.L.R. Fed. 463.

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, as regards educational program or school rules as applied to learning disabled student. 166 A.L.R. Fed. 503.

33-2002A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — This section was amended and redesignated as § 33-2001 by § 3 of S.L. 1991, ch. 323.

33-2003. Responsibility of school districts for education of gifted/talented children. — Each public school district is responsible for and

shall provide for the special instructional needs of gifted/talented children enrolled therein.

Public school districts in the state shall provide instruction and training for children between the ages of five (5) years and eighteen (18) years who are gifted/talented as defined in this chapter and by the state board of education. The state board of education shall, through its department of education, determine eligibility criteria and assist school districts in developing a variety of flexible approaches for instruction and training that may include administrative accommodations, curriculum modification and special programs. [I.C., § 33-2003, as added by 1991, ch. 323, § 5, p. 839; am. 1993, ch. 409, § 1, p. 1501.]

STATUTORY NOTES

Prior Laws. — Former § 33-2003, which comprised 1963, ch. 13, § 185, p. 27; am. 1965, ch. 228, § 4, p. 542; am. 1974, ch. 10, § 12, p. 49, was repealed by S.L. 1991, ch. 323, § 2, effective July 1, 1991.

Effective Dates. — Section 8 of S.L. 1991,

ch. 323 read: "Section 5 of this act shall be in full force and effect on and after July 1, 1993. The remaining sections of this act shall be in full force and effect on and after July 1, 1991." Approved April 4, 1991.

33-2004. Contracting by approved form for education by another school district, approved rehabilitation center or hospital, or a corporation. — The trustees of a school district may contract on a form adopted by the state superintendent of public instruction for the education of exceptional children by another school district or by any private or public rehabilitation center, hospital, corporation, or state agency approved by the state department of education and when the students are transferred from the school district to the institution, corporation or district, said school district shall agree to pay therefor to the institution, corporation or district contracting to educate the students, amounts computed as follows:

1. For each resident student educated by another school district, the amount of the tuition rate certified for the receiving district under the provisions of section 33-1405, Idaho Code;

When public school districts contract for the education of exceptional children residing within the several districts, one (1) district shall be designated as the educating district for the purpose herein.

2. For each resident student educated by contract by a rehabilitation center, hospital, corporation or state agency, the contract amount cannot be greater than the educational costs of the student.

When any rehabilitation center, hospital, corporation or state agency shall have contracted for the education of any exceptional children as defined in this chapter all such children shall be enrolled in the district of their residence; and the institution, hospital or corporation shall certify to the home school district the daily record of attendance of each such pupil. The home district shall be eligible for reimbursement of costs approved by the state superintendent of public instruction as provided in this subsection and in section 33-1002, Idaho Code.

Reimbursement of approved costs shall be part of the district's exceptional child contract allowance and cannot exceed the amount of state support

contracted students would generate if they were enrolled in an educational program for which average daily attendance is computed. [1963, ch. 13, § 186, p. 27; am. 1965, ch. 228, § 5, p. 542; am. 1972, ch. 25, § 1, p. 30; am. 1974, ch. 127, § 2, p. 1305; am. 1975, ch. 50, § 1, p. 97; am. 1980, ch. 179, § 13, p. 382; am. 1985, ch. 107, § 19, p. 191; am. 1996, ch. 133, § 2, p. 456.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

ch. 25 provided that the act should take effect on and after July 1, 1972.

Effective Dates. — Section 2 of S.L. 1972,

33-2005. Additional disbursement. — School districts which identify and provide appropriate services to students with serious emotional disturbances at a high incidence level shall be eligible for an additional disbursement from state general funds. The state department of education shall determine the eligibility of school districts and the amount of additional disbursements. This determination shall be made in an equitable fashion and shall be limited by legislative appropriations. [I.C., § 33-2005, as added by 1996, ch. 133, § 3, p. 456.]

STATUTORY NOTES

Prior Laws. — Former § 33-2005, which comprised 1963, ch. 13, § 186A, as added by 1963, ch. 350, § 1, p. 1010; am. 1965, ch. 228, § 6, p. 542; am. 1974, ch. 127, § 3, p. 1305;

am. 1980, ch. 179, § 14, p. 382; am. 1991, ch. 323, § 6, p. 839, was repealed by S.L. 1994, ch. 428, § 1, effective July 1, 1994.

33-2005A. Ancillary personnel — Funding. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-2005A, as added by 1969, ch. 318, § 1, p. 981; am. 1975, ch. 218,

§ 1, p. 609; am. 1991, ch. 323, § 7, p. 839, was repealed by S.L. 1994, ch. 428, § 1, effective July 1, 1994.

33-2006. Education of certain expectant or delivered mothers. — Every public school district in this state within which is located a state licensed or state sponsored system of care for expectant or delivered mothers shall provide, subject to rules and regulations of the state board of education, instruction in accredited courses, by a qualified instructor, for expectant and delivered mothers under twenty-one (21) years of age, who are enrolled for care by such systems of care, and shall, upon satisfactory completion of required public school courses or correspondence courses from a state institution of higher learning in Idaho, issue credits or a diploma evidencing such achievement. [1963, ch. 13, § 186B, as added by 1963, ch. 350, § 1, p. 1010; am. 1965, ch. 228, § 7, p. 542; am. 1969, ch. 163, § 1, p. 496; am. 1972, ch. 42, § 1, p. 65.]

STATUTORY NOTES

Effective Dates. — Section 8 of S.L. 1965, ch. 228 provided that the act should take effect from and after July 1, 1965.

Section 1 of S.L. 1972, ch. 42 provided the act should take effect on and after July 1, 1972.

33-2007. Cost of instruction and postage subject to reimbursement. — Costs of instruction, including necessary transportation of teachers, shall be subject to reimbursement by the state department of education from state funds. Tuition charged by the University of Idaho and Idaho State College, together with necessary postage on completed lesson material, shall be paid by the school district wherein the maternity home is located, also subject to reimbursement from state funds. Costs of required books and supplies for each course shall be paid by the maternity home. [1963, ch. 13, § 186C, as added by 1963, ch. 350, § 1, p. 1010.]

STATUTORY NOTES

Cross References. — Apportionments from public school income fund, § 33-1009.

33-2008. Outpatients. — As to expectant or delivered mothers who are outpatients of a licensed maternity home, the public school district, in which the home is located, shall provide instruction, pursuant to this chapter, for said outpatients. [1963, ch. 13, § 186D, as added by 1963, ch. 350, § 1, p. 1010.]

33-2009. Education of children housed in juvenile detention facilities. — Every public school district in this state within which is located a detention facility housing juvenile offenders pursuant to court order shall provide, subject to rules of the state board of education, instruction in accredited courses, by a certified instructor, for the juvenile offenders under twenty-one (21) years of age who are housed in the detention facility for juvenile offenders, and shall upon satisfactory completion of required public school courses or correspondence course from a state institution of higher learning in Idaho, issue credits or a diploma evidencing such achievement. Every student served by a public school district pursuant to this section shall be counted as an exceptional child by the district for purposes of state reimbursement. [I.C., § 33-2009, as added by 1989, ch. 155, § 20, p. 371; am. 1998, ch. 88, § 9, p. 298.]

STATUTORY NOTES

Prior Laws. — Former § 33-2009 which comprised I.C., § 33-2009, as added by 1967, ch. 100, § 1, p. 209, was repealed by S.L. 1974, ch. 127, § 4.

Effective Dates. — Section 21 of S.L. 1989, ch. 155 provided that the act would become effective January 15, 1990.

33-2010. Education of disabled adult students housed in adult correctional facilities. — Any individual eighteen (18) years of age through the semester of school in which the person attains the age of

twenty-one (21) years, who is incarcerated in an adult correctional facility shall not be entitled to special education and related services unless such person was identified as a child with a disability or had an individualized education program under part B of the federal individuals with disabilities education act (IDEA) in his last educational placement prior to incarceration. [I.C., § 33-2010, as added by 1998, ch. 23, § 2, p. 138; am. 2002, ch. 70, § 1, p. 156.]

STATUTORY NOTES

Federal References. — Part B of the federal individuals with disabilities education act, referred to in this section, is codified as 20 USCS § 1411 et seq.

Effective Dates. — Section 2 of S.L. 2002, ch. 70 declared an emergency. Approved March 11, 2002.

CHAPTER 21

JUNIOR COLLEGES

SECTION.

- 33-2101. Junior college districts, approvals, boundaries of junior college areas.
- 33-2101A. Junior college shall mean community college.
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SECTION.

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- 33-2131. Exemption of property from execution sale.
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- 33-2133. Tax exemption.
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SECTION.

- 33-2135. Termination — Reactivation.
 33-2136. Student centers and student union buildings.
 33-2137. Imposition and collection of student fees and charges.
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 33-2139. State junior college account created.
 33-2140. [Repealed.]
 33-2141. Disbursement of funds — Method

SECTION.

- Funds disbursed not considered in fixing tuition.
 33-2142. Direct payment to board — Utilization.
 33-2143. Disposition of funds when Junior College ceases to operate.
 33-2144. Disbursement to public employee retirement fund.

33-2101. Junior college districts, approvals, boundaries of junior college areas. — Junior college districts may be formed and organized in accordance with the provisions of this chapter, and junior colleges maintained therein shall be intermediate institutions of higher education above grade twelve (12).

To provide for the orderly establishment and growth of junior colleges, a statewide system of six junior college areas is hereby created, as hereafter described. The State Board of Education shall only approve the existence of one centrally located district in any area until the enrollment of such junior college therein exceeds 1000 full time day students a year from within the area.

The boundaries of junior college areas hereby created may be changed by the State Board of Education upon 30 days notice to the boards of trustees of each school district in each of the junior college areas affected and upon public hearing. No change shall be made to place more than one existing junior college in an area. Notice of any boundary change shall forthwith be filed with the board of county commissioners of each county affected.

Area No. 1 shall comprise the territory of the counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.

Area No. 2 shall comprise the territory of the counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.

Area No. 3 shall comprise the territory of the counties of Ada, Adams, Boise, Canyon, Gem, Payette, Valley, Washington, that portion of Elmore County lying generally west of a line described as follows:

Beginning at the junction of the boundary line common to Blaine, Boise, Custer and Elmore counties, thence proceeding in a general southerly direction along the boundaries of Blaine and Elmore counties and Blaine and Camas counties to the northeast corner of Section 1, T. 1 S., R. 11 E., B. M.; thence west 3 miles to the northwest corner of Section 3, same township and range; thence south 4 miles to the southwest corner of Section 22, T. 1 S., R. 11 E., B. M.; thence west a distance of 15 miles more or less to the southwest corner of Section 19, T. 1 S., R. 9 E., B. M.; thence south 2 miles to the southwest corner of Section 31, T. 1 S., R. 9 E., B. M.; thence west a distance of one and three-fourths (1 3/4) miles more or less to a point where the south section line of Section 35, T. 1 S., R. 8 E., B. M., intersects Bennett Creek; thence in a southwesterly direction down said Bennett Creek approximately 8 miles more or less to the southwest corner of Section 27, T. 2 S., R. 8 E., B. M.; thence south along the section lines 5 miles to the southwest corner of Section 22, T. 3 S., R. 8 E., B. M.; thence west 3 miles to the northwest corner

of Section 30, T. 3 S., R. 8 E., B. M.; thence south along the section lines a distance of 14 miles more or less to the Snake River which is also the boundary between Elmore and Owyhee counties; and that portion of Owyhee County lying generally west of a line described as follows:

Beginning at the northwest corner of Section 33, T. 5 S., R. 7 E., B. M., which is on the boundary of Elmore and Owyhee counties, thence south along the section lines 7 miles more or less to the southwest corner of Section 33, T. 6 S., R. 7 E., B. M.; thence west to the northwest corner of Section 4, T. 7 S., R. 7 E., B. M.; thence south one and one-half (1 1/2) miles more or less to the southwest corner of Section 9, T. 7 S., R. 7 E., B. M.; thence east along the section lines 10 miles more or less to the northeast corner of Section 13, T. 7 S., R. 8 E., B. M.; thence south 4 miles to the southeast corner of Section 36, T. 7 S., R. 8 E., B. M.; thence east twenty-one and one-half (21 1/2) miles more or less to the north-south center line of Section 3, T. 8 S., R. 12 E., B. M.; which is also the boundary line of Twin Falls and Owyhee counties; thence south along said boundary lines 36 miles to the township line between Townships 13 South and 14 South, R. 12 E., B. M.; thence west along said township line twenty-seven and one-half (27 1/2) miles more or less to the southwest corner of Section 31, T. 13 S., R. 8 E., B. M.; thence south along the section lines 17 miles more or less to the southwest corner of Section 30, T. 16 S., R. 8 E., B. M.; which is also the Nevada State Line.

Area No. 4 shall comprise the territory of the counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls, and those portions of the counties of Elmore and Owyhee not included in the description of Area No. 3.

Area No. 5 shall comprise the territory of the counties of Bannock, Bear Lake, Caribou, Franklin, Oneida, Power, and that portion of Bingham County lying west of a line described as follows:

Beginning at the northeast corner of Section 1, T. 3 N., R. 33 E., B. M.; which is also a point common to Jefferson, Bonneville and Bingham counties; thence due south on the section line a distance of eighteen (18) miles to the southeast corner of Section 36, T. 1 N., R. 33 E., B. M.; thence east on the township line a distance of five and one-half (5 1/2) miles more or less to the north-south center line of Section 6, T. 1 S., R. 35 E., B. M.; thence south on the center section line a distance of six (6) miles more or less to a point where said center line intersects the east-west section line common to Section 6, T. 2 S., R. 35 E., B. M. and Section 31, T. 1 S., R. 35 E., B. M.; thence east along said section line a distance of five and one-half (5 1/2) miles more or less to the northeast corner of Section 1, T. 2 S., R. 35 E., B. M.; thence south one and one-half (1 1/2) miles to the southwest corner of the northwest quarter of Section 7, T. 2 S., R. 36 E., B. M.; thence east six (6) miles more or less to the Range line common to Ranges 36 and 37 E., B. M.; thence south on said Range line two and one-quarter (2 1/4) miles more or less to its point of intersection with the Blackfoot River; thence following the Blackfoot

River in a northeasterly and southeasterly direction to a point where said river intersects the township line common to Bingham and Caribou counties.

Area No. 6 shall comprise the territory of the counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, Teton, and that portion of Bingham County not included in the description of Area No. 5. [1963, ch. 363, § 1, p. 1037; am. 1965, ch. 238, § 1, p. 576.]

33-2101A. Junior college shall mean community college. — Notwithstanding any other provision of law, in sections 21-805, 21-806, 21-809, 23-404, 31-808, 33-101, 33-107, 33-107B, 33-601, 33-1252, 33-2101, 33-2102, 33-2103, 33-2104, 33-2105, 33-2106, 33-2107, 33-2107A, 33-2107B, 33-2107C, 33-2108, 33-2109A, 33-2110, 33-2110A, 33-2110B, 33-2111, 33-2112, 33-2113, 33-2114, 33-2115, 33-2116, 33-2117, 33-2118, 33-2119, 33-2121, 33-2122, 33-2123, 33-2124, 33-2125, 33-2126, 33-2130, 33-2135, 33-2137, 33-2138, 33-2139, 33-2141, 33-2142, 33-2143, 33-2144, 33-2211, 33-3716, 33-3717, 33-4001, 33-4003, 33-4004, 33-4006, 33-4201, 33-4306, 33-4315, 46-314, 50-1721, 57-1105A, 59-1324, 59-1371, 59-1374, 67-2320, 67-2322 and 67-5332, Idaho Code, the term “junior college” shall mean and shall be denoted as “community college.” [I.C., § 33-2101A, as added by 1987, ch. 94, § 1, p. 186; am. 1996, ch. 322, § 30, p. 1029; am. 1997, ch. 275, § 3, p. 813; am. 2000, ch. 285, § 20, p. 908; am. 2001, ch. 331, § 10, p. 1161; am. 2006, ch. 380, § 1, p. 1175.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 380, deleted “67-5309C” preceding “and 67-5332.”

Compiler's Notes. — Section 33-4006, referred to in this section, was repealed by S.L. 1987, ch. 39, § 1.

33-2102. Courses of study. — A community college established pursuant to the provisions of this chapter shall give instruction in academic subjects, and in such nonacademic subjects as shall be authorized by its board of trustees.

The academic courses given and the instruction therein shall be of the same standard as the same are given and taught in the first two (2) years of any other state institution of higher education, and credits therefor shall be accepted by other state institutions for credit toward a baccalaureate degree. [1963, ch. 363, § 2, p. 1037; am. 1987, ch. 48, § 2, p. 76.]

33-2103. Minimum requirements for the formation of a junior college district. — A junior college district shall include (a) the area, or any part thereof, of four (4) or more school districts and the area or any part thereof, of one (1) or more counties having an aggregate enrollment in grades nine (9) through twelve (12) during the school year, next preceding the organization of such district, of not less than two thousand (2000) students, and (b) property having market value for assessment purposes as shown by the equalized assessment rolls of real and personal property for the preceding calendar year of not less than one hundred million dollars (\$100,000,000).

The state board of education in considering a petition filed pursuant to section 33-2104, Idaho Code, shall verify all the above requirements, as well as determine the number of the students expected to attend and the facilities available, or to be made available, for operation of the school. [1963, ch. 363, § 3, p. 1037; am. 1965, ch. 238, § 2, p. 576; am. 1980, ch. 350, § 13, p. 887.]

33-2104. Formation of community college districts. — A community college district may be organized by the vote of the school district electors of the proposed district, voting at an election called and held as herein provided:

a. A petition or petitions, signed by not less than one thousand (1,000) qualified electors as defined in section 34-104, Idaho Code, residing in the proposed community college district, giving the name of the proposed community college, describing the boundaries of the proposed district and praying for the organization of the territory therein described as a community college district, together with a true copy thereof, shall be filed with the clerk of the board of county commissioners of the county in which such proposed district is to be located;

b. Said petition or petitions shall be presented to the clerk of the board of county commissioners. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk as provided in section 34-1807, Idaho Code;

c. In the event the petition is found by the county clerk to contain the required number of signatures, the clerk shall file the original in his office, and forthwith mail the copy thereof to the state board of education for its consideration and recommendation. The state board of education shall consider the existing opportunities for education beyond grade twelve (12) in the proposed district, the number of prospective students for such community college, the financial ability of the proposed district to maintain such college and furnish the standard of education contemplated by this chapter with income from tuition and other sources as herein provided. If the state board approves the establishment of such community college, it shall so advise the board of county commissioners within thirty (30) days after the receipt of such petition or petitions, and recommend that an election be called as herein provided for the organization of such district;

d. Upon receipt by the board of county commissioners of the written approval of the state board of education, the board of county commissioners shall enter an order that a special election be called within the proposed new district for the purpose of voting on the question of the creation of such district on one (1) of the election dates enumerated in section 34-106, Idaho Code. No notice of election need be posted, but notice shall be published, the election shall be conducted and the returns thereof canvassed as required in chapter 14, title 34, Idaho Code. The ballot shall contain the words "Community College District — Yes" and "Community College District — No," along with a voting position in which the voter may express his choice. If two-thirds (2/3) of all votes cast be in the affirmative, the board of county commissioners shall enter an order declaring such community college

district established, designating its name and boundaries. A certified copy of such order shall forthwith be filed with the state board of education;

e. If the proposed district embraces an area in two (2) or more counties, the county in which it is proposed to locate the community college shall be considered the home county, in which the proceedings for the organization of the district shall be conducted, taken and had. Before calling an election on the creation of the proposed district, the board of county commissioners of the home county shall advise the board or boards of county commissioners of such other county or counties of the proposed election, to the end that a date may be agreed upon and the election be held in all counties affected on the same day. The board of county commissioners in any such other county shall give notice of the election, conduct the same and canvass the returns thereof as though it were the only county in which such election were being held. The returns of the election so canvassed shall be certified promptly to the board of county commissioners of the home county. The result of the election shall in turn be certified by the board of county commissioners of the home county to such board in each county in which the proposed district may lie, and if the result of the election be in the affirmative, a certified copy of the order creating the district shall be filed with the clerk of the board of county commissioners of such other county or counties, and entered into the minutes of the board therein. [1963, ch. 363, § 4, p. 1037; am. 2007, ch. 241, § 1, p. 713.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 241, throughout the section, substituted “community college” for “junior college”; in subsection a., substituted “qualified electors as defined in section 34-104, Idaho Code” for “school district electors”; rewrote subsection b., which formerly read: “Said petition or petitions shall be verified by at least one (1) school district elector, which verification shall state that affiant knows that all the parties whose names are signed to the petition or petitions have the qualification of school district electors and are residents of the proposed district. The verification may be made before any notary public”; in subsection c., substituted “In the event the petition is found by the county clerk to contain the required number of signatures, the clerk shall file” for “Upon receipt of such petition or petitions the clerk of the board of county commissioners shall file”; and in subsection d., in the first sentence, added “on one (1) of the election dates enumerated in section 34-106, Idaho Code,” in the second sentence, substituted “as

required in chapter 14, title 34, Idaho Code” for “as required in elections on the question of consolidation of school districts,” and in the third sentence, substituted “along with a voting position in which the voter may express his choice” for “each followed by a box in which the voter may express his choice by marking a cross ‘X’.”

Effective Dates. — Section 2 of S.L. 2007, ch. 241 declared an emergency and apply to all petitions for formation of a community college district that were initially circulated after the effective date of this act. Section 33-2104, Idaho Code, as it existed one day prior to the effective date of this act shall apply to all petitions for formation of a community college district that were initially circulated prior to the effective date of this act. The election process in Section 1 of this act shall apply to all elections for formation of a community college district held on and after the effective date of this act. Approved March 28, 2007.

33-2105. Addition of territory to junior college districts. — Any territory not in an existing junior college district may become a part of a junior college district by a vote of the school district electors resident of said territory, voting at an election called and held as herein provided.

A petition signed by not less than 100 school district electors of the territory proposed to be added to the junior college district, or twenty per cent (20%) of the school district electors within the territory, whichever is the lesser, describing the boundaries of the territory, and a true copy thereof, shall be filed with the board of trustees of the junior college district. The board shall forward the original of said petition, with its recommendations, to the state board of education, and a copy thereof to the board of county commissioners of the home county of the junior college district. The state board of education shall consider such petition, as it is required to consider a petition for the formation of a junior college district. If it approve the petition, notice to that effect shall be given the board of trustees of the junior college district and to the board of county commissioners of the home county of the junior college district.

When any such petition has been approved by the state board of education, an election shall be held in the manner of elections for the creation of a junior college district, except that polling places shall be established only in the territory proposed to be added to the district. The question shall be deemed approved only if a majority of the votes cast in the territory were cast in favor of the proposal, and if this be the case, the territory shall be part of said junior college district with all the force and effect as though said territory had been originally included in said junior college district at the time of its original organization.

Notices to and by boards of county commissioners and to the state board of education shall be as provided in section 33-2104. The state board of education shall notify the state liquor dispensary that such territory has become a part of the junior college district. [1963, ch. 363, § 5, p. 1037.]

STATUTORY NOTES

Cross References. — Liquor account, distribution to junior college district, § 23-404.

State liquor dispensary, § 23-201 et seq.

33-2106. Trustees of community college districts. — (1) The board of trustees of each community college district shall consist of five (5) school electors residing in the district who shall be appointed or elected as herein provided.

(a) Immediately following the establishment of a community college district, the state board of education shall appoint the members of the first board, who shall serve until the election and qualification of their successors.

(b) At the first election of trustees after the creation of a district, five (5) trustees shall be elected: two (2) for terms of two (2) years each, and three (3) for terms of four (4) years each. Thereafter the successors of persons so elected shall be elected for terms of four (4) years.

(c) Excluding any first election of trustees after the creation of a district, at any other election of trustees held in 2008, and in each trustee election thereafter, trustees shall be elected to terms of four (4) years. If more than two (2) trustee positions are eligible for election in 2008, one (1) trustee shall be elected to a term of four (4) years and two (2) trustees shall be

elected to a term of six (6) years. Thereafter the successors of persons so elected in 2008 shall be elected for terms of four (4) years.

(d) The expiration of any term shall be at the regular meeting of the trustees next following the election for the successor terms.

(2) Elections of trustees of community college districts shall be biennially in even-numbered years, and shall be held on a date authorized in section 34-106, Idaho Code. Vacancies on the board of trustees shall be filled by appointment by the remaining members, but if by reason of vacancies there remain on the board less than a majority of the required number of members, appointment to fill such vacancies shall be made by the state board of education. Any person so appointed shall serve until the next trustee election, at which time his successor shall be elected for the unexpired term. The trustees shall take and subscribe the oath of office required in the case of state officers and said oath shall be filed with the secretary of state.

(3) Notice of the election, the conduct thereof, the qualification of electors and the canvass of returns shall be as prescribed in chapter 14, title 34, Idaho Code.

(4) The person or persons, equal in number to the number of trustees to be elected for regular or unexpired terms, receiving the largest number of votes shall be declared elected. An individual shall be a candidate for a specific position of the board and each candidate must declare which position he seeks on the board of trustees. If it be necessary to resolve a tie between two (2) or more persons, the board of trustees shall determine by lot which thereof shall be declared elected. The clerk of the board shall promptly notify any person by mail of his election, enclosing a form of oath to be subscribed by him as herein provided.

(5) When elections held pursuant to this section coincide with other elections held by the state of Idaho or any subdivision thereof, or any municipality or school district, the board of trustees may make agreement with the body holding such election for joint boards of election and the payment of fees and expenses of such boards of election on such proportionate basis as may be agreed upon.

(6) At its first meeting following the appointment of the first board of trustees, and at the first regular meeting following any community college trustee election, the board shall organize, and shall elect one (1) of its members chairman, one (1) a vice-chairman; and shall elect a secretary and a treasurer, who may be members of the board; or one (1) person to serve as secretary and treasurer, who may be a member of the board.

(7) The board shall set a given day of a given week in each month as its regular meeting time. Three (3) members of the board shall constitute a quorum for the transaction of official business.

(8) The authority of trustees of community college districts shall be limited in the manner prescribed in section 33-507, Idaho Code. [1963, ch. 363, § 6, p. 1037; am. 1973, ch. 10, § 1, p. 22; am. 2007, ch. 92, § 1, p. 271; am. 2008, ch. 27, § 9, p. 50.]

STATUTORY NOTES

Cross References. — Oath of office, § 59-401 et seq.

Amendments. — The 2007 amendment, by ch. 92, throughout the section, substituted “community college” for “junior college,” and added subsection designations; in subsection (1)(b), substituted “and three (3) for terms of four (4) years each” for “two (2) for terms of four years each, and one (1) for a term of six (6) years” in the first sentence and “four (4) years” for “six (6) years” at the end; added subsection (1)(c); in the first sentence in subsection (2), substituted “held on a date authorized in section 34-106, Idaho Code” for “held on such uniform day of such uniform month as the board of trustees shall determine”; and in subsection (3), substituted “as prescribed in

chapter 14, title 34, Idaho Code” for “as prescribed for the election of school district trustees, and the board of trustees shall have and perform the duties therein prescribed for the board of trustees of school districts,” and deleted the former last sentence, which read: “As a condition of voting, an elector shall execute an oath before a judge or clerk of election to the effect that such elector is a school district elector and a resident of the junior college district.”

The 2008 amendment, by ch. 27, substituted “one (1) of its members” for “one (1) of its member” in subsection (6).

Effective Dates. — Section 4 of S.L. 2007, ch. 92 declared an emergency. Approved March 20, 2007.

33-2107. General powers of the board of trustees. — The board of trustees of each junior college district shall have the power:

1. To adopt rules and regulations for its own government and the government of the college;

2. To employ legal counsel and other professional, and nonprofessional persons, and to prescribe their qualifications;

3. To acquire and hold, and to dispose of, real and personal property, and to construct, repair, remodel and remove buildings;

4. To contract for the acquisition, purchase or repair of buildings, in the manner prescribed for trustees of school districts;

5. To dispose of real and personal property in the manner prescribed for trustees of school districts;

6. To issue general obligation or revenue bonds in the manner now, or as may be, prescribed by law;

7. To convey and transfer real property of the district upon which no college buildings used for instruction are situated, to nonprofit corporations, school districts, junior college housing commissions, counties or municipalities, with or without consideration; to rent real or personal property for the use of the college, its students or faculty, for such terms as may be determined by the board of trustees; to lease real property of the district not actually in use for college instructional purposes for such terms as may be determined by the board; and to lease real property and improvements to the Idaho state building authority, for a term not to exceed fifty (50) years, with or without consideration, and to enter into agreements with the Idaho state building authority for the Idaho state building authority to provide a facility, pursuant to section 67-6410, Idaho Code;

8. To acquire, hold, and dispose of, water rights;

9. To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the granter;

10. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program; to accept grants from

any source for the conduct of such program; and to conduct such program on, or off, campus;

11. To invest any funds of the district in such securities, and apply the interest or profits from such investment, as prescribed for the investment of the funds, and the application of the interest or profits, in the case of school district boards of trustees. [1963, ch. 363, § 7, p. 1037; am. 2003, ch. 349, § 6, p. 932.]

STATUTORY NOTES

Cross References. — Commissions for dormitory housing, creating, § 33-2118.

33-2107A. Establishment and operation of third and fourth year college curriculum in junior college districts. — The board of trustees of a junior college district of an urban area, upon filing with the state board of education a notice of intent to exercise the powers herein granted, shall thereafter be authorized and empowered to organize and operate an upper division consisting of the third and fourth years of college curriculum with powers to grant baccalaureate degrees in liberal arts and sciences, business and education. The operation of the junior college and the upper division shall be kept separate; however, the joint use of facilities is authorized providing a proper cost allocation is made. The buildings and equipment for the use of said upper division may be purchased, leased, constructed, maintained, and administered from funds obtained by the board of trustees' levy. Such levy shall not exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property within the district. Said board under section 33-2113, Idaho Code, may obtain capital funds through issuance of general obligation bonds for such equipment and buildings, with the total tax levy for operation and bonds of the upper division not to exceed the levy limit authorized in this section. Such tax shall be certified and levied as provided for other taxes of the district. All other costs of operation of said upper division shall be provided by tuition and fees paid by the student. Gifts and grants may be accepted by the board of trustees for this or other purposes. A student who has been a resident of the district for not less than one (1) year at time of admission to the upper division, or who has completed the first two (2) years in the college, shall be given preference for admission to the upper division. [I.C., § 33-2107A, as added by 1965, ch. 16, § 4, p. 27; am. 1995, ch. 82, § 12, p. 218.]

STATUTORY NOTES

Compiler's Notes. — Section 1 of S.L. 1965, ch. 16 contained a statement of policy which read: "It is hereby declared to be the policy of the state of Idaho in the public interest to provide an opportunity for a full college education to students living at home by permitting the establishment of an upper

division college curriculum accessible to such students living in or near urban counties as herein defined."

Effective Dates. — Section 5 of S.L. 1965, ch. 16 declared an emergency. Approved February 5, 1965.

33-2107B. Powers granted by preceding section in addition to other powers. — The provisions of this Act shall be in addition to all powers and authorities heretofore vested by law or by regulation of the State Board of Education in the Board of Trustees of a junior college district and all provisions of Section [Sections] 33-2101, 33-2103 to 33-2115, Idaho Code, and any additions or supplements amendatory thereto, shall be applicable to providing the third and fourth year college curriculum within such junior college districts, unless the same are specifically in contradiction with any provision of this Act. Districts exercising the powers herein granted may drop the word “Junior” from their designation. [1965, ch. 16, § 2, p. 27.]

STATUTORY NOTES

Compiler’s Notes. — The bracketed word “Sections”, in the first sentence of this section, was inserted by the compiler. The words “this act” refer to S.L. 1965, ch. 16, compiled as §§ 33-2107A — 33-2107C.

33-2107C. Definition of urban area districts empowered to create upper divisions. — The powers provided herein for instruction of the third and fourth year college curriculum shall only be exercisable by junior college districts which at the date of the filing of notice of establishment of upper divisions as required are urban area districts, which is defined as a district containing (a) market value for assessment purposes of taxable property of not less than three hundred fifty million dollars (\$350,000,000) and (b) a population of not less than ninety thousand (90,000) persons, in the county of the district where the college is located. [1965, ch. 16, § 3, p. 27; am. 1980, ch. 350, § 14, p. 887.]

33-2108. Junior college districts public corporations — Sue and be sued — Corporate seal. — Each junior college district shall be a public corporation, may sue and be sued in its corporate name, and shall have an official seal which shall be judicially noticed. [1963, ch. 363, § 8, p. 1037.]

JUDICIAL DECISIONS

Cited in: Wickstrom v. North Idaho College, 111 Idaho 450, 725 P.2d 155 (1986).

33-2109. President — Instructors and other employees — Requirements for admission and graduation — Certificates and diplomas — Textbooks and equipment. — The board of trustees shall elect a president of the college and, upon his recommendation, appoint such officers, instructors, specialists, clerks and other personnel as it may deem necessary; fix their salaries, and prescribe their duties. It shall fix the requirements for admission, and the time and standard of graduation, and issue such certificates for graduation and diplomas as may be deemed suitable. It shall prescribe the textbooks, and provide suitable apparatus, furniture and equipment for carrying on the work of the college. [1963, ch. 363, § 9, p. 1037.]

33-2109A. Use of unused sick leave. — Upon separation from employment with the community college district by retirement, in accordance with chapter 13, title 59, Idaho Code, or with chapter 1, title 33, Idaho Code, an employee shall be accorded credit for unused sick leave as provided in section 67-5333, Idaho Code. Each community college district shall contribute to the sick leave account for the purposes of this section, as provided in subsection (2)(c) of section 67-5333, Idaho Code. [I.C., § 33-2109A, as added by 1983, ch. 100, § 1, p. 218; am. 1997, ch. 275, § 4, p. 813; am. 2006, ch. 380, § 2, p. 1175.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 380, substituted “community college” for “junior college” twice; substituted “67-5333” for “67-5339”; and substituted “subsection (2)(c) of section 67-5333” for “subsection (3) of section 67-5339.”

33-2110. Tuition. — (1) All students of a community college shall pay tuition that shall be fixed annually by the board of trustees not later than the 1st day of August of each year. The tuition for full-time students taking normal academic courses provided by the college, who are residents of the district, shall be fixed at not less than three hundred fifty dollars (\$350) per annum, and may be increased by increments of not more than ten percent (10%) per annum to a maximum tuition of two thousand five hundred dollars (\$2,500) per annum. The tuition shall be, as nearly as is practicable, the annual costs of all elements of providing the courses of instruction, including interest on general obligation bonds, teaching, administration, maintenance, operation and depreciation of equipment and buildings, supplies and fuel, and other ordinary and necessary expenses of operation incurred in providing courses by the community college, provided that the tuition of students residing outside the district but within the county or counties wherein the district is located shall be fixed after taking into account moneys received by the community college district from any funds allocated to the community college from the educational funds of the state of Idaho, other than allocations for professional-technical education; and provided that the tuition of students residing outside the district and the county but within the state of Idaho shall be fixed after taking into account moneys received from educational funds other than professional-technical moneys, as referred to in this chapter, from the state of Idaho. Receipt of moneys, as hereinbefore provided in this section, shall be based upon the receipts from the sources referred to during the fiscal year preceding the fixing of the tuition. A student in a community college shall not be deemed a resident of the district or of the county or of the state of Idaho, unless that student is deemed a resident as defined by section 33-2110B, Idaho Code, for the district, county or state prior to the date of his first enrollment in the community college, and no student who was not a resident of the district, county or state shall gain residence while attending and enrolled in the community college. The residence of a minor shall be deemed to be the residence of his parents or parent or guardian. Tuition shall be payable in advance, but the board may, in its discretion, permit tuition to be paid in installments.

(2) The board of trustees shall also fix fees for laboratory and other special services provided by the community college and for special courses, including, but not limited to, night school, off-campus courses, summer school, professional-technical courses, as otherwise provided in this chapter, and other special instruction provided by the community college and nothing in this chapter shall be deemed to control the amount of tuition for special courses or fees for special services, as herein provided, but the same shall be, as nearly as reasonable, sufficient to cover the cost of all elements of providing courses as above defined.

(3) In this chapter, unless the context requires otherwise, the following definitions shall be uniformly applied. The application of these definitions shall be retroactive and prospective.

(a) "Fees" shall include all charges imposed by the governing body, to students, as a whole or individually, in excess of tuition. Student fees may be imposed for special courses, instruction, and service:

(i) "Special course or instruction fee" means those fees charged for any class or educational endeavor which shall have unique costs beyond a traditional college lecture class; for example, foreign language audio or visual instruction, specialized musical instruction, computer class, art class involving supplies or audiovisual equipment, professional-technical instruction, laboratory class, remedial instruction, team teaching, satellite transmissions, outside instructor, professionally assisted instruction, etc.

(ii) "Special service fee" means those fees charged for activity, benefit, or assistance offered to students which is beyond traditional classroom instruction; for example, student government support, providing of student health staff or facilities, student union support, intramural and intercollegiate athletics, recreational opportunities, financial aid services, graduation expense, automobile parking, student yearbook/publication, insurance, registration, noncapital library user fee, etc.

Fees shall not be imposed for any capital improvements except as specifically authorized in chapter 21, title 33, Idaho Code.

(b) "Tuition" shall mean a sum charged students for cost of college instruction and shall include costs associated with maintenance and operation of physical plant, student services and institutional support. [1963, ch. 363, § 10, p. 1037; am. 1965, ch. 238, § 3, p. 576; am. 1967, ch. 327, § 1, p. 957; am. 1971, ch. 127, § 1, p. 505; am. 1977, ch. 59, § 1, p. 113; am. 1981, ch. 106, § 1, p. 160; am. 1982, ch. 255, § 6, p. 653; am. 1982, ch. 264, § 1, p. 675; am. 1983, ch. 92, § 1, p. 204; am. 1990, ch. 54, § 1, p. 125; am. 1994, ch. 179, § 1, p. 418; am. 1999, ch. 329, § 31, p. 852; am. 2002, ch. 294, § 1, p. 846; am. 2008, ch. 133, § 1, p. 375.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 133, in subsection (1), in the second sentence, substituted "two thousand five hundred dollars (\$2,500)" for "one thousand two hundred fifty dollars (\$1,250)," and in the

third sentence, deleted "For all other students taking such courses" from the beginning.

Effective Dates. — Section 2 of S.L. 2002, ch. 294 declared an emergency. Approved March 26, 2002.

RESEARCH REFERENCES

A.L.R. — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. 53 A.L.R.3d 641.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. 56 A.L.R.3d 641.

33-2110A. Tuition of out of district Idaho students, county taxes and other financial support. — (1) Any student residing in the area of a county outside of a community college district or in a county without a community college district, who has been a resident of the county and state as defined by section 33-2110B, Idaho Code, immediately prior to the date of his first enrollment in a community college, which residence may not be acquired while attending and enrolled in a community college, may enroll in any community college in the state, and the county of his residence shall pay that portion of his tuition as hereinafter set out. The tuition which shall be paid by the resident county shall be that portion of the tuition uniformly established by a community college district for all out of district students, both in state as well as out of state, pursuant to section 33-2110, Idaho Code, after deducting therefrom the amount of tuition paid by a resident student at the community college; however, the liability of the resident county shall not exceed two-thirds ($\frac{2}{3}$) of the total tuition and fees charged and in no instance shall it exceed five hundred dollars (\$500) each semester for a two (2) semester year for a full-time student. The student shall pay the tuition and fees charged a student resident in the district, and the balance, if any, of the nonresident student tuition above the maximum liability of the county of his residence. No county shall be liable for out of district tuition unless the board of county commissioners of that county has first verified to the community college in writing the fact that the student is a resident of the county. Upon verification, the county shall thereafter be liable for the out of district tuition so long as the student is duly enrolled and attending the college subject to the following limitations:

(a) Liability shall be the term of the curriculum for which the student is enrolled, with a maximum lifetime liability of three thousand dollars (\$3,000).

(b) Liability shall terminate if the student's domiciliary residence changes and that change continues for twelve (12) months.

(2) The nonresident tuition shall be established annually not later than August 1 and shall be forthwith filed with the state board of education, together with a statement supporting the computation thereof. Each community college, by October 15 and March 15 of each year, shall bill the county of residence of each nonresident student enrolled at the commencement of each semester, and each board of county commissioners shall allow and order paid any bill for tuition at the first regular meeting following receipt of the bill, but not exceeding forty-five (45) days after receipt. Upon failure of a county to pay the tuition, a community college district may commence action in the district court of the state of Idaho for the county to collect the same.

(3) For the payment of tuition of nonresident students as herein provided, there shall be allocated in each county without a community college district

to a county community college fund, and paid to the county treasurer to be held in that fund, fifty percent (50%) of all moneys apportioned to the county out of liquor funds of the state of Idaho as set forth in chapter 4, title 23, Idaho Code, and that amount shall be deducted from the amount that would otherwise be allocated to the county; and if liquor funds are not sufficient to pay the tuition, commencing for the calendar year 1966, the board of county commissioners shall levy upon the taxable property within each county without a community college district, and, in a county with such a district, upon the taxable property within the county lying outside of the community college district, a property tax not to exceed six hundredths percent (.06%) of market value for assessment purposes, to be certified as set out in section 33-2111, Idaho Code. The proceeds of the levy shall be placed in the county community college fund. Apportionment of liquor funds herein provided shall commence for the fiscal quarter ending September 30, 1965, and accruing during that quarter.

(4) Based upon the enrollment established by the first semester's tuition bills received by October 15, the board of county commissioners shall establish immediately a total community college annual tuition budget for two (2) semesters which shall be equal to twice the amount of the tuition bills plus a contingency factor of ten percent (10%). This budget shall be adjusted after March 15 based on any change of enrollment shown by the second semester tuition bills. If enrollment is from zero to not more than four (4) students, a minimum budget of five (5) students at five hundred dollars (\$500) each shall be established. In the event all tuition bills received have been paid, notwithstanding any other provision hereof, (a) any liquor funds received, which in the quarter when received to any extent are in excess of the budget, to the extent of that excess shall not be paid over to the county treasurer to be held in the community college fund, and (b) any funds received from the levy on taxable property, which when received to any extent are in excess of the budget after the application of liquor funds thereto, to the extent of that excess shall not be paid over to the community college fund. Excess liquor funds shall be paid pursuant to law as if this section were not applicable and excess funds shall be paid to the general fund of the county. In the event the total liquor fund payable hereunder to the county community college fund together with the receipts from the levy on taxable property for each fiscal year are insufficient to pay tuition bills, which deficiency is caused by a levy of less than the maximum allowed hereunder, or by enrollment in excess of the budget herein provided, the budget for each following year shall be increased to the maximum allowed by the maximum tax levy authorized to pay any deficiency at the earliest time. If the deficiency is due to the lack of funds in a fiscal year when the maximum levy authorized shall have been made, for the next fiscal year thereafter the number of students from that county shall be limited by the board of county commissioners to the extent necessary to pay the deficiency not later than the end of the following year. Provided nevertheless, for the two (2) semesters commencing September, 1965, the board of county commissioners shall limit the community college budget and total students to estimated liquor funds available on quarterly disbursements through

June 30, 1966. Any limitation of students authorized shall be accomplished (a) on the basis of student grades and financial need, and (b) by each community college notifying the county of residence of each student's application and the county shall accept or reject the application at least five (5) days prior to the tuition billing dates set out herein. A community college shall nevertheless have a right to require any student residing outside the district to pay nonresident tuition if the county of his residence is more than twenty-five percent (25%) in arrears of a total county tuition bill for one (1) year as of the beginning of the subsequent semester, but tuition shall be refunded to such students when paid by the county. [I.C., § 33-2110A, as added by 1965, ch. 238, § 4, p. 576; am. 1967, ch. 327, § 2, p. 957; am. 1967, ch. 371, § 1, p. 1066; am. 1969, ch. 179, § 1, p. 536; am. 1971, ch. 127, § 2, p. 505; am. 1974, ch. 139, § 8, p. 1343; am. 1975, ch. 160, § 5, p. 414; am. 1982, ch. 255, § 7, p. 653; am. 1982, ch. 264, § 2, p. 675; am. 1983, ch. 113, § 1, p. 241; am. 1985, ch. 218, § 1, p. 528; am. 1990, ch. 113, § 1, p. 235; am. 1996, ch. 208, § 9, p. 658; am. 1996, ch. 322, § 31, p. 1029; am. 2005, ch. 42, § 1, p. 166.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 208, § 9, effective July 1, 1996, and ch. 322, § 31, effective January 1, 1997, — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 208, § 9, in subsection (3), deleted “and the moneys derived from such levy shall be exempt from the limitation imposed by section 63-2220, Idaho Code” from the end of the former second sentence, which was deleted in its entirety by ch. 322, § 31, see below.

The 1996 amendment, by ch. 322, § 31, in subsection (3), deleted the former second sentence which read, “Such levy shall be exempt from the limitation imposed by section 63-923(1), Idaho Code, and the moneys derived from such levy shall be exempt from the limitation imposed by section 63-2220, Idaho Code.”

Compiler's Notes. — Section 5 of S.L. 1965, ch. 238 read: “Savings clause and separability. — This act shall not impair or affect

the right of any person to hold any office or position under the school laws of this state, nor shall it impair or affect any act done, or right accruing, accrued or acquired, or any liability, penalty or forfeiture incurred under said laws, at the time this act takes effect. It is hereby declared to be the controlling legislative intent that if any provisions of this act, or any of the applications thereof, to any person or circumstances, is held invalid, the remainder of the act and the application of such provisions to persons and circumstances other than those to which it is held invalid, shall not be affected thereby, to the end that the provisions of this act are separable.”

Effective Dates. — Section 2 of 1969, ch. 179 declared an emergency. Approved March 18, 1969.

Section 6 of 1969, ch. 238 provided that the act should take effect from and after July 1, 1965.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

33-2110B. Residency — Rules — Appeal — Standards for nonresidents. — (1) For purposes of this chapter, a “resident student” is:

(a) Any student whose parents or court-appointed guardians are domiciled in the community college district and provide more than fifty percent (50%) of his support. Domicile means an individual's true, fixed and permanent home and place of habitation. It is the place where he intends to remain, and to which he expects to return when he leaves without intending to establish a new domicile elsewhere. To qualify under this section the parents or guardian must have resided continuously in the

community college district for twelve (12) months next preceding the opening day of the term for which the student matriculates.

(b) Any student who receives less than fifty percent (50%) of his support from parents or legal guardians who are not residents of the community college district for voting purposes and who has continuously resided in the community college district for twelve (12) months next preceding the opening day of the period of instruction during which he proposes to attend the community college.

(c) The spouse of a person who is classified, or is eligible for classification, as a resident of the community college district for the purposes of attending that community college.

(d) A member of the armed forces of the United States, stationed in the community college district on military orders.

(e) An officer or an enlisted member of the Idaho national guard.

(f) A student whose parents or guardians are members of the armed forces and stationed in the community college district on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose his residence when his parents or guardians are transferred on military orders.

(g) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of active service, who at the time of separation designates the community college district as his intended domicile or who has the district as the home of record in service and enters the community college within one (1) year of the date of separation.

(h) Any individual who has been domiciled in the community college district, has qualified and would otherwise be qualified under the provisions of this statute, and who is away from the district for a period of less than one (1) calendar year and has not established legal residence elsewhere provided a twelve (12) month period of continuous residence has been established immediately prior to departure.

(2) A community college board of trustees shall adopt rules and regulations applicable to their college now or hereafter established to determine residence status of any student and to establish procedures for review of that status.

(3) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected community college is located. An appeal from the district court shall lie as in all civil actions.

(4) Nothing contained herein shall prevent a community college board of trustees from waiving tuition to be paid by nonresident students.

(5) Nothing contained herein shall prevent a community college board of trustees from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of the first two (2) years of postsecondary education. [I.C., § 33-2110B, as added by 1982, ch. 264, § 3, p. 675; am. 1983, ch. 113, § 2, p. 241; am. 2008, ch. 66, § 1, p. 169.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 66, throughout the section, substituted “community college” for “junior college”; and

added present paragraph (1)(e) and made related redesignations.

33-2111. Taxes and other financial support for community colleges. — For the maintenance and operation of each community college, in addition to the income from tuition paid by students as hereinbefore provided, the board of trustees may levy upon the taxable property within the district a tax not to exceed one hundred twenty-five thousandths percent (.125%) of the market value for assessment purposes on all taxable property within the district.

The tax levy determined by the board of trustees, within said limit, shall be certified to the board of county commissioners in each county in which the district may lie, not later than the second Monday in September of each year. No levy in excess of one hundred twenty-five thousandths percent (.125%) of the market value for assessment purposes on all taxable property within the district shall be made unless a supplemental levy in a specified amount be first authorized through an election held, as provided in sections 33-401 through 33-406, Idaho Code, as if the community college district were a school district and approved by a majority of the district electors voting in such election. [1963, ch. 363, § 11, p. 1037; am. 1979, ch. 291, § 1, p. 769; am. 1980, ch. 242, § 1, p. 561; am. 1982, ch. 255, § 8, p. 653; am. 1995, ch. 82, § 13, p. 218; am. 1996, ch. 322, § 32, p. 1029; am. 2007, ch. 129, § 1, p. 386.]

STATUTORY NOTES

Cross References. — Collection of taxes, § 63-1101 et seq.

Surplus liquor fund, distribution to junior college district, § 23-404.

Amendments. — The 2007 amendment, by ch. 129, twice substituted “one hundred twenty-five thousandths percent (.125%)” for “sixteen hundredths percent (.16%).”

Compiler’s Notes. — Sections 33-401 —

33-406, referred to in the second paragraph of this section, were amended and redesignated as §§ 33-402 — 33-407 by S.L. 1982, ch. 60, §§ 2, 3, 7, 8, 11, 13. The reference should probably be to chapter 4, title 33, Idaho Code.

Effective Dates. — Section 2 of S.L. 2007, ch. 129 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

33-2112. Additional tax levy for gymnasium and grounds. — The board of trustees of any community college district may levy a tax not exceeding one one-hundredth percent (.01%) on each dollar of the assessed value of the taxable property within the district for the maintenance and care of the gymnasium and college grounds of the district, in addition to other taxes authorized by law for the maintenance and support of the community college. [1963, ch. 363, § 12, p. 1037; am. 1991, ch. 315, § 1, p. 822; am. 1996, ch. 208, § 10, p. 658; am. 1996, ch. 322, § 33, p. 1029.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 208, § 10,

effective July 1, 1996, and ch. 322, § 33, effective January 1, 1997 — which do not

appear to conflict and have been compiled together.

The 1996 amendment, by ch. 208, § 10, deleted "and the moneys derived from such levy shall be exempt from the limitations imposed by section 63-2220, Idaho Code" from the end of the former last sentence, which was deleted in its entirety by ch. 322, § 33, see below.

The 1996 amendment, by ch. 322, § 33, deleted the former last sentence which read, "Such levy shall be exempt from the limita-

tion imposed in section 63-923(1), Idaho Code, and the moneys derived from such levy shall be exempt from the limitation imposed by section 63-2220, Idaho Code."

Effective Dates. — Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

33-2113. Capital funds. — (1) The board of trustees of each junior college district may issue general obligation bonds in the manner and form, and for the same purposes, as prescribed for public school districts, the maximum amount of general obligation bonds outstanding, computed in the manner so prescribed shall not at any time exceed one per cent (1%) of the market value for assessment purposes of the taxable property in the district. The board may also create a plant facilities reserve fund in the manner, and for the same purposes, as prescribed for school districts.

(2) Tax levies for the purposes of this section shall be certified to the board of county commissioners at the same time as are certified the tax levies provided in section 33-2111, Idaho Code.

(3) The board of trustees of each junior or community college district may issue bonds in the same manner and form, and for the same purposes as state institutions of higher education pursuant to chapter 38, title 33, Idaho Code. [1963, ch. 363, § 13, p. 1037; am. 1980, ch. 350, § 15, p. 887; am. 1987, ch. 264, § 1, p. 556.]

STATUTORY NOTES

Cross References. — Distribution of liquor fund, § 23-404.

33-2114. Reports of junior college districts. — The board of trustees of each junior college district shall cause to be made, annually, a full and complete audit of the financial transactions of the district. Such audit shall be made by and under the direction of the board of trustees by an independent auditor in accordance with generally accepted auditing standards and procedures. The auditor shall be employed on written contract.

One (1) copy of the audit report shall be filed with the legislative services office, and one (1) copy with the state board of education, not more than ten (10) days after its acceptance by the board of trustees.

The state board of education may at its discretion direct the board of trustees of any junior college district to cause to be made an examination of the books and accounts of their district, as provided for public school districts.

The board of trustees shall submit to the state board of education such other reports as the state board may from time to time require. [1963, ch. 363, § 14, p. 1037; am. 1977, ch. 71, § 4, p. 134; am. 1993, ch. 327, § 16, p. 1186; am. 1996, ch. 159, § 14, p. 502.]

STATUTORY NOTES

Effective Dates. — Section 16 of S.L. in full force and effect on and after July 1, 1963, ch. 363, provided that the act should be 1963.

33-2115. Counties, cities, school districts and boards to cooperate. — (1) The county commissioners of the county in which any community college is located, the mayor and council of the city in or adjacent to which a community college is located, and the board of trustees of the school district in such city, whether operating under special charter or general law, shall be and hereby are authorized and empowered to cooperate with the board of trustees of the community college district, and to permit the use, for community college purposes, of such buildings, grounds, athletic fields, gymnasiums, libraries, laboratories and other equipment and facilities, as are not at the time required for other purposes by such county, city or school district.

(2) The boards of trustees of community college districts shall be and hereby are authorized and empowered to cooperate with the county commissioners, mayors, city councils and school district boards of trustees identified in subsection (1) of this section and to permit the use, for such county, city and school district purposes, of such buildings, grounds, athletic fields, gymnasiums, libraries, laboratories and other equipment and facilities, as are not at the time required for other purposes by the community college. [1939, ch. 32, § 14, p. 62; am. 2004, ch. 381, § 1, p. 1142.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2116.

33-2116. Dormitory housing projects — Student union buildings — Finding and declaration of necessity. — It is hereby declared: That in certain communities within the state wherein junior college districts have been created there are and will be insufficient housing and other facilities for students desiring to attend such junior colleges, and that it is in the community interest to provide adequate low-cost dormitories and student union buildings for students desiring to attend such institutions; that private sources cannot provide the types of such housing and facilities required for such students within the cost which said students may pay; that it is determined to be desirable that such dormitories and student union buildings be constructed from moneys obtained from other than ad valorem taxes and without any liability, debt or encumbrance upon junior college districts; and the necessity and the public interest in the provisions hereinafter enacted are hereby declared as a matter of legislative determination. [1957, ch. 87, § 1, p. 137; am. 1961, ch. 30, § 1, p. 40.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2122.

Former § 33-2116 is now compiled as § 33-2115.

JUDICIAL DECISIONS

Constitutionality.

The statutes authorizing the dormitory housing commission to issue bonds and other obligations without approval of the voters are

constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

33-2117. Definitions. — The following terms, wherever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Junior college housing commission" or "commission" shall mean any public corporation created by section 33-2118.

(b) "District" shall mean any junior college district organized and existing under chapter 21 of title 33, Idaho Code.

(c) "Governing body" shall mean the board of trustees of a junior college district.

(d) "Chairman" shall mean the chairman of the board of trustees of a junior college district.

(e) "Clerk" shall mean the clerk of the board of trustees of a junior college district.

(f) "Federal government" shall include the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

(g) "Dormitory project" shall mean the construction of dormitory or dormitories for occupation by students attending a junior college organized under chapter 21, title 33, Idaho Code, and shall include the construction of buildings for occupation by students and facilities for the feeding and recreation of students, equipment and furniture therefor and all matters usually incidental thereto, including the furnishing of sewer, heat, water service, landscaping, and streets or rights of ingress and egress. The term "dormitory project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements, and all other work in connection therewith.

(h) "Students" shall mean persons duly enrolled as students in a junior college.

(i) "Bonds" shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by a commission pursuant to this act.

(j) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgments, mortgage or otherwise, and the indebtedness secured by such liens.

(k) "Obligee of the commission" or "Obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessors demising to the commission property used in connection with the dormitory project, or any assignee or assignees of such lessor's interest, or any part thereof, and the federal government when it is a party to any contract with the commission. [1957, ch. 87, § 2, p. 137.]

STATUTORY NOTES

Cross References. — Dormitory project includes student union buildings, student centers and facilities, § 33-2136.

formerly compiled as § 33-2123.

The words "this act" refer to S.L. 1957, ch. 87, compiled as §§ 33-2116 — 33-2135.

Compiler's Notes. — This section was

33-2118. Creation of dormitory housing commissions. — In each junior college district of the state there is hereby created an independent public body corporate and politic to be known as a dormitory housing commission which shall not be an agency of the junior college district; provided, however, that such commission shall not transact any business or exercise its powers hereunder until or unless the board of trustees of the junior college district, by proper resolution, shall declare at any time hereafter that there is need for a commission to function in such district. The determination as to whether or not there is such need for a commission to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five (25) residents of the district asserting that there is need for a commission to function in such district and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a dormitory or dormitories at the junior college operated by such district, and shall set out in said resolution its finding, setting forth the necessity for such dormitory or dormitories, including such facts as it may find proper supporting such resolution.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of, the commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder, upon proof of the adoption of a resolution by the board of trustees of a junior college district declaring the need for the commission. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for a commission and finds in substantially the foregoing terms (no further detail being necessary) that such conditions exist in the junior college district. A copy of such resolution, duly certified by the clerk, shall be admissible in evidence in any suit, action or proceeding. [1957, ch. 87, § 3, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2124.

The words in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Constitutionality.

The statutes authorizing the dormitory housing commission to issue bonds and other obligations without approval of the voters are

constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

33-2119. Appointment, qualifications and tenure of commissioners. — When the board of trustees of a junior college district adopts a resolution as set forth in the preceding section, the clerk of said board shall promptly transmit a certified copy of said resolution to the governor of the state of Idaho, and the governor shall promptly thereafter appoint three (3) persons as commissioners of the commission created for said district. The governor shall certify to the clerk of the district the names of the persons so appointed, and the clerk shall notify said persons in writing of their appointment and the term for which each of them is appointed. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2) and three (3) years respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of 3 years, except that all vacancies shall be filled for the unexpired term. No commissioner may be an officer of [or] employee of the junior college district for which the commission is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services for the authority in any capacity, but he shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his duties.

The powers of each commission shall be vested in the commissioners thereof in office from time to time. Two (2) commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The by-laws of the commission shall designate which of the commissioners appointed shall be the first chairman, and such chairman shall serve in the capacity of chairman until the expiration of his term of office as commissioner. When the office of the chairman thereafter becomes vacant, the commissioners shall select a chairman from their number. The commissioners shall select from their number a vice-chairman, and may employ a secretary (who may be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The persons employed by the commission may be employees of the junior college district but shall not be trustees of the district. For such legal services as it may require, the commission may employ its own counsel. The commission may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper. [1957, ch. 87, § 4, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2125.

The bracketed word "or", in the fourth sentence of the first paragraph of this section,

was inserted by the compiler.

The words in parentheses so appeared in the law as enacted.

33-2120. Interested commissioners or employees. — No commissioner or employee shall acquire any interest, direct or indirect, in any dormitory project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any dormitory project. If any commissioner or employee owns or controls an interest, direct or indirect, in any property included or planned to be included, in any dormitory project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. Upon such disclosure such commissioner or employee shall not participate in any action affecting such property or have any further connection or position with the commission. [1957, ch. 87, § 5, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2126.

33-2121. Removal of commissioners. — For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by the governor of Idaho upon receiving a resolution therefor by junior college trustees requesting such removal and setting out the grounds and reasons for such request, but a commissioner shall be removed only after he shall have been given a copy of the resolution at least ten (10) days prior to a hearing thereon if a hearing is requested to be held before the governor and has had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner pursuant to this section, a report of the proceeding, together with the charges and findings thereon, shall be filed in the office of the clerk of the district. [1957, ch. 87, § 6, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2127.

33-2122. Powers and duties of dormitory housing commissions. — A dormitory housing commission shall constitute an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and be sued; to have a corporate seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission, and to make and from time to time amend and repeal by-laws, rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the commission.

(b) Within the junior college district: to prepare, carry out, acquire, lease and operate dormitory housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any dormitory housing project or any part thereof; to contract for the management and supervision of dormitory housing projects, and in this connection the supervision of the students occupying a dormitory shall be delegated to the officers and employees of the junior college so that the supervision and conduct of such dormitory and its occupants are harmonious with the supervision and conduct of similar dormitories or other operations conducted by said junior college, it being considered that it is necessary that the junior college, at which the students occupying said dormitories are attending, shall have fit and proper control and responsibility of the discipline, supervision and conduct of such students; provided further that a lease may be entered into leasing the dormitory and properties to the junior college district under any terms and conditions deemed reasonable and desirable by the commissioner and the board of trustees of the junior college.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a dormitory housing project; and to include in any contract let in connection with a project any stipulations required by law relating to wages and hours of labor, and comply with any conditions which the federal government may attach to its financial aid of the project.

(d) To own, hold and improve real and personal property; to purchase, lease, obtain options upon, acquire by gift, grant or bequest or devise or otherwise, any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guaranties from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on such insurance; to rent, manage and lease said dormitory housing projects within the purview and purpose of this act, and to establish and revise the rents or charges therefor; provided, however, that said rents shall be as uniform as may be possible under the terms and conditions of the obligations of such commission with similar dormitory rentals at said junior college;

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be cancelled.

(f) To exercise all or any part or combination of powers herein granted and do all things necessary or incidental to the proper operation of this act.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to any commission unless the legislature shall specifically so state. [1957, ch. 87, § 7, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2128.

For words "this act," see Compiler's Notes, § 33-2117.

Former § 33-2122 is now compiled as § 33-2116.

33-2123. Operation not for profit. — It is hereby declared to be the policy of this state that each dormitory housing commission shall manage and operate or contract for the operation or management of its dormitory housing project in an efficient manner so as to enable it to fix the rentals to students at said junior college at the lowest possible rates consistent with providing decent, safe and sanitary accommodations, and no dormitory housing commission shall construct or operate any such project for profit or as a source of revenue to the junior college district; provided, however, that such commission shall fix the rentals for such dormitory at no higher rates than it shall find necessary in order to produce revenues (a) to pay, as the same become due, the principal and interest on the bonds of the commission, (b) to meet the cost of and to provide for maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the commission; and (c) to create (during not less than the six (6) years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter, and to maintain such reserve. [1957, ch. 87, § 8, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2129.

The words in parentheses so appeared in the law as enacted.

Former § 33-2123 is now compiled as § 33-2117.

33-2124. Planning, zoning and building laws. — All dormitory housing projects of a commission shall be subject to the planning, zoning, sanitary and buildings laws, ordinances and regulations applicable to the locality in which the dormitory is situated. In the planning and location of any dormitory the commission shall take into consideration the general plan of the junior college campus and shall confer and cooperate with the board of trustees so that such dormitory, both in architecture and location, shall comply with the plan of development of said junior college. [1957, ch. 87, § 9, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2130.

Former § 33-2124 is now compiled as § 33-2118.

33-2125. Bonds. — A dormitory housing commission shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. A commission shall also have power to issue refunding bonds for

the purpose of paying or retiring bonds previously issued by it. In order to carry out the purposes of this act, a commission may issue, upon proper resolution, bonds on which the principal and interest are payable (a) exclusively from the income and revenue of a dormitory project financed with the proceeds of such bonds; or (b) exclusively from such income and revenues together with grants and contributions from the federal government or other source in aid of such project; provided that the proceeds of grants of funds and moneys received or to be received from the United States of America or any agency or instrumentality thereof, pursuant to agreements entered into between the commission and the United States of America or any agency or instrumentality thereof prior to the issuance of the bonds, may be considered as revenue of the project for which such bonds are issued.

Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of a commission (and such bonds and obligations shall so state on their face) shall not be a debt or liability, direct or indirect, of the junior college district, the state, or any political subdivision thereof, and neither the junior college district, the state or any political subdivision thereof, shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of the commission or funds due the commission. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. [1957, ch. 87, § 10, p. 137; am. 1970, ch. 80, § 1, p. 196.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2131.

Former § 33-2125 is now compiled as § 33-2119.

The words in parentheses so appeared in the law as enacted.

For words "this act," see Compiler's Notes, § 33-2117.

JUDICIAL DECISIONS

Constitutionality.

Those statutes authorizing the dormitory commission to issue bonds and obligations

and to incur indebtedness are constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

33-2126. Form and sale of bonds. — When the commission shall find the proposed dormitory project or projects to be necessary for the proper operation of the junior college and economically feasible and such finding is recorded in the minutes of the commission, the commission shall be authorized by its resolution and may be issued in one (1) or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject

to such terms of redemption (with or without premium) as such resolution, its trust indenture, or the bonds so issued may provide.

The bonds may be sold at public sale at not less than par; provided, however, that if such bonds are sold to the United States of America or an agency or instrumentality thereof, they may be sold at private sale.

In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signature shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of a commission or the security therefor, any such bond, reciting in substance that it has been issued by the commission to aid in financing a dormitory housing project to provide dwelling accommodations for students attending a junior college, shall be conclusively deemed to have been issued for a dormitory housing project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with purposes and provisions of this act. [1957, ch. 87, § 11, p. 137; am. 1970, ch. 80, § 2, p. 196.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2132.

Former § 33-2126 is now compiled as § 33-2120.

The insertion of "[bonds of]" in the first paragraph was done by the publisher to add material inadvertently dropped by S.L. 1970, chapter 80.

The words "this act", as used in the third and fourth paragraphs, originated with S.L. 1970, Chapter 80, which is compiled as §§ 33-2125, 33-2126, and 33-2127. The references probably should be to "this chapter".

The words in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Constitutionality.

Those statutes authorizing the dormitory commission to issue bonds and obligations

and to incur indebtedness are constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

33-2127. Provisions of bonds and trust indentures. — In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence, the proceeds of grants of funds and moneys received or to be received from the United States of America or any agency or instrumentality thereof pursuant to agreements entered into between the commission and the United States of America or any agency or instrumentality thereof prior to the issuance of the bonds may be considered as revenues of the project as referred to in this chapter.

(b) To covenant against pledging all or any part of its rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any dormitory housing projects or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it.

(c) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(d) To covenant (subject to the limitations contained in this act) as to the rents and fees to be charged in the operation of a dormitory housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(e) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(f) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(g) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(h) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said commission, to take possession of any dormitory housing project or part thereof, and (so long as said commission shall continue in default) to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the commission with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(i) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants

herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein but not contrary hereto. [1957, ch. 87, § 12, p. 137; am. 1970, ch. 80, § 3, p. 196.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2133.

Former § 33-2127 is now compiled as § 33-2121.

The words in parentheses so appeared in the law as enacted.

For words "this act," see Compiler's Notes, § 33-2117.

Effective Dates. — Section 4 of S.L. 1970, ch. 80 declared an emergency. Approved March 2, 1970.

JUDICIAL DECISIONS

Constitutionality.

Those statutes authorizing the dormitory commission to issue bonds and obligations

and to incur indebtedness are constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

33-2128. Remedies of an obligee of commission. — An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee;

(a) By mandamus, suit, action or proceedings at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission or the district and the fulfillment of all duties imposed upon said authority by this act.

(b) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission. [1957, ch. 87, § 13, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2134.

Former § 33-2128 is now compiled as § 33-2122.

For words "this act," see Compiler's Notes, § 33-2117.

33-2129. Additional remedies conferrable by commission. — The commission shall have power by its resolution, trust indenture, lease or other contract, to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any dormitory housing project or any part thereof to be surrendered to any such obligee, which possession may be

retained by such bondholder or trustee so long as said commission shall continue in default.

(b) To obtain the appointment of a receiver of any dormitory housing project of said authority or any part thereof, and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such dormitory housing project or any part thereof and (so long as said commission shall continue to be in default) operate and maintain the same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligation of said commission as the court shall direct.

(c) To require said commission and the commissioners thereof to account as if it and they were the trustees of an express trust. [1957, ch. 87, § 14, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2135.

Former § 33-2129 is now compiled as § 33-2123.

The words in parentheses so appeared in the law as enacted.

33-2130. Construction of powers conferred. — Nothing in this act or any other law shall be construed as authorizing a dormitory housing commission to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the junior college district, the state or any subdivision thereof; nor shall any provision of this act or other law be construed as authorizing a dormitory housing commission to mortgage or otherwise encumber property of any kind, real, personal or mixed, or any interest therein, but this section shall not be construed as preventing the pledge of the revenues of a dormitory housing commission as authorized in this act. [1957, ch. 87, § 15, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2136.

Former § 33-2130 is now compiled as § 33-2124.

For words "this act," see Compiler's Notes, § 33-2117.

33-2131. Exemption of property from execution sale. — All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against a dormitory housing commission be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues. [1957, ch. 87, § 16, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was Former § 33-2131 is now compiled as § 33-2125.
formerly compiled as § 33-2137.

33-2132. Aid from federal government. — In addition to the powers conferred upon a dormitory housing commission by other provisions of this act, a dormitory housing commission is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any dormitory housing project within its area of operation, to take over or lease or manage any dormitory housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize every dormitory housing commission to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any dormitory housing project by such dormitory housing commission. [1957, ch. 87, § 17, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was For words "this act," see Compiler's Notes,
formerly compiled as § 33-2138. § 33-2117.
Former § 33-2132 is now compiled as § 33-2126.

33-2133. Tax exemption. — The property of a dormitory housing commission is declared to be public property used for essential public and educational purposes, and such property and a dormitory housing commission shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof; except that such commission may contract to pay special charges for sewerage, water, or other special services of like nature, in order to obtain such services, but not as a tax. [1957, ch. 87, § 18, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was Former § 33-2133 is now compiled as § 33-2127.
formerly compiled as § 33-2139.

RESEARCH REFERENCES

A.L.R. — Tax exemption of property of used by personnel as living quarters. 55
educational body as extending to property A.L.R.3d 485.

33-2134. Reports. — At least once a year, the dormitory housing commission shall file with the clerk a report of its activities for the preceding year together with an accounting of its operations, and shall make recommendations with reference to such additional legislation or other action as

it deems necessary in order to carry out the purposes of this act. [1957, ch. 87, § 19, p. 137.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2140.

Former § 33-2134 is now compiled as § 33-2128.

For words "this act," see Compiler's Notes, § 33-2117.

33-2135. Termination — Reactivation. — Upon the full payment of all its obligations, including bonds, notes, debentures or debts of any kind, the commissioners of a dormitory housing commission shall convey all properties held or owned by said authority to the junior college district and may, by appropriate resolution, declare their purposes at an end and terminated; upon approval of such resolution by the board of trustees of the junior college district the authority shall be declared inactive and the commissioners relieved of their duties; provided, however, that the commission may be reactivated for new projects, in the same manner as new commissioners are appointed in section 33-2118, and such new commissioners shall proceed with all the powers granted in this act. [1957, ch. 87, § 20, p. 137.]

STATUTORY NOTES

Legislative Intent. — Section 21 of S.L. 1957, ch. 87 read: "Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those

as to which it is held invalid, shall not be affected thereby."

Compiler's Notes. — This section was formerly compiled as § 33-2141.

Former § 33-2135 is now compiled as § 33-2129.

For words "this act," see Compiler's Notes, § 33-2117.

33-2136. Student centers and student union buildings. — In addition to the powers conferred upon dormitory housing commissions by the other provisions of this chapter, a dormitory housing commission is empowered to acquire, construct, improve, add to, reconstruct, repair, maintain, operate and manage any or all student union buildings and student centers to consist of a building or buildings containing the facilities, equipment and furnishings common to student union buildings and student centers as such buildings and centers exist in the various colleges and universities in the United States, including but without limitation, facilities for the feeding and recreation of students and including all equipment, structures, appurtenances and facilities necessary to supplying such unions and centers with sewer, water, electric, heating, telephone and similar public utility facilities, landscaping, parking space, and streets, roads or alleys necessary for proper ingress and egress. Wherever the words "dormitory project" or "dormitory housing project" appear in this chapter, whether in the singular or plural, they shall be understood to include student union buildings, student centers and facilities as authorized in this section, either

singly or in combination with one or more dormitories or similar housing facilities. Wherever the word "dormitory" appears in this chapter, whether singular or plural, it shall be understood to include a student union building or student union center and related facilities as authorized in this section. [I.C., § 33-2142, as added by 1961, ch. 30, § 2, p. 40.]

STATUTORY NOTES

Compiler's Notes. — This section was Former § 33-2136 is now compiled as § 33-2130.
formerly compiled as § 33-2142.

33-2137. Imposition and collection of student fees and charges. — In each junior college district in which there shall now or hereafter exist a student union building or student center, there is hereby imposed upon each student in attendance at the college of such district a student union fee for the use and availability of such student union building or student center, the amount of which shall be fixed from time to time by the board of trustees of such district, such fee shall be in addition to all other fees authorized to be imposed by such board of trustees and shall not be subject to any statutory limit which may exist on total fees imposed by such board of trustees. Where such student union building or student center shall have been constructed by a junior college housing commission through the issuance of bonds under this chapter, the proceeds of such student union fees shall be regarded as one of the revenues derived from the operation of the student union building or student center, and such board of trustees and such junior college housing commission are authorized to enter into such agreements as they may see fit with respect to the amounts of such fees and the manner of the collection and disposition thereof. Any such agreement may provide that the fees so fixed shall not be diminished or decreased after the issuance of any such bonds until such bonds shall have been retired. [I.C., § 33-2143, as added by 1961, ch. 30, § 3, p. 40.]

STATUTORY NOTES

Compiler's Notes. — This section was Former § 33-2137 is now compiled as § 33-2131.
formerly compiled as § 33-2143.

33-2138. Housing commissions validated. — All junior college housing commissions heretofore created or activated under the provisions of this chapter are hereby declared to be validly organized and legally created public bodies and all acts and proceedings heretofore taken in connection with the creation or activation of such commissions and taken by such commissions for the authorization, sale and issuance of the bonds of such commissions for the purpose of acquiring or constructing dormitory, housing or student union building or center projects, any or all, are hereby validated, confirmed and declared to be legally effective. [I.C., § 33-2144, as added by 1961, ch. 30, § 4, p. 40.]

STATUTORY NOTES

Legislative Intent. — Section 5 of S.L. 1961, ch. 30 read: "Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any one or more provisions of this act or the application thereof to any person or circumstance is held by any court of competent jurisdiction to be invalid, the remaining provisions hereof and the application of the provisions hereof to persons or circum-

stances other than those as to which they are held invalid shall not be affected by such holding."

Compiler's Notes. — This section was formerly compiled as § 33-2144.

Former § 33-2138 is now compiled as § 33-2132.

Effective Dates. — Section 6 of S.L. 1961, ch. 30 declared an emergency. Approved February 15, 1961.

33-2139. State junior college account created. — There is hereby created a state junior college account in the state operating fund in the state treasurer's office to which shall be credited all moneys which may be appropriated, apportioned, or allocated to that account. The state treasurer shall make such disbursements from the account as may be ordered by the state board of education in accordance with the provisions of this act. [1967, ch. 350, § 1, p. 993; am. 1982, ch. 255, § 9, p. 653.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-2139 is now compiled as § 33-2133.

The words "this act" refer to S.L. 1967, ch.

350, §§ 1 — 6, which are compiled herein as §§ 33-2139 and 33-2141 to 33-2143.

33-2140. Allocation of fund — Formula. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1967, ch. 350, § 3, p. 993; am. 1969, ch. 178, § 1, p. 535, was repealed by S.L. 1977, ch. 61, § 1.

A former § 33-2140 is now compiled as § 33-2134.

33-2141. Disbursement of funds — Method — Funds disbursed not considered in fixing tuition. — Funds appropriated to the state junior college account shall be disbursed to the qualifying junior college districts as follows: fifty percent (50%) of the moneys in the account shall be disbursed on the twentieth day of July of each year and the remainder of the account shall be disbursed on the first day of September of each year. Funds disbursed under this act shall not be considered by the board of trustees of any junior college in fixing tuition of such college pursuant to section 33-2110, Idaho Code. [1967, ch. 350, § 4, p. 993; am. 1974, ch. 260, § 1, p. 1682; am. 1987, ch. 142, § 1, p. 283.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-2141 is now compiled as § 33-2135.

For words "this act," see Compiler's Notes, § 33-2139.

Effective Dates. — Section 2 of S.L. 1974, ch. 260, provided the act should be in full force and effect on and after July 1, 1974.

33-2142. Direct payment to board — Utilization. — Disbursement shall be by direct payment to the governing board of such Junior College District which board shall utilize and disburse such funds in the furtherance of the academic program which such board is authorized by law to administer. [1967, ch. 350, § 5, p. 993.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-2142 is now compiled as § 33-2136.

33-2143. Disposition of funds when Junior College ceases to operate. — Should any Junior College cease to operate as a Junior College existing under and by reason of Chapter 21 of Title 33, Idaho Code, during the biennium for which this Act is effective, the Board of Education of the State of Idaho shall compute the amount that such Junior College would be entitled to for the current year during which said Junior College would be inoperative based upon its enrollment for the preceding year during which it was operated and shall return the amount which would have been due such Junior College to the Treasurer of the State of Idaho to be placed in the General Fund of the State of Idaho by said Treasurer, provided, however, that if, during the biennium for which this Act is effective, any Junior College shall be made an institution of higher education of the State of Idaho within the jurisdiction and control of the State Board of Education, said board shall retain the amount which would have otherwise accrued to said Junior College and such funds so retained shall be added to other funds appropriated to said college and use [used] for the maintenance and operation thereof. [1967, ch. 350, § 6, p. 993.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-2143 is now compiled as § 33-2137.

The bracketed word "used" was inserted by the compiler.

For words "this act," see Compiler's Notes, § 33-2139.

33-2144. Disbursement to public employee retirement fund. — The disbursing of funds as provided by sections 33-2139 through 33-2143, Idaho Code, shall be subject to the payments required to be made by section 59-1332B [59-1324], Idaho Code, from the state junior college fund to the public employee retirement fund. Such payments shall be prior to the payment of funds from the state junior college fund to the several junior college districts as provided by said statute. [I.C., § 33-2144, as added by 1969, ch. 144, § 2, p. 466.]

STATUTORY NOTES

Cross References. — Public employee retirement fund, § 59-1311.

State junior college fund, § 33-2139.

Compiler's Notes. — Former § 33-2144 is now compiled as § 33-2138.

The bracketed reference "59-1324" was

added by the compiler due to the amending and redesignation of § 59-1332B by S.L. 1990, ch. 231, § 20.

CHAPTER 22

VOCATIONAL EDUCATION — FEDERAL AID

SECTION.

33-2201. Assent to Smith-Hughes Act.

33-2202. State board for professional-technical education — Powers and duties.

33-2203. Further powers of board.

33-2204. Meetings of state board.

33-2205. State board to appoint administrator — Designation of assistants — Duties.

33-2206. Reports.

33-2207. Custody and disbursement of moneys appropriated.

SECTION.

33-2208. Eastern Idaho Technical College created.

33-2209. College is body politic and corporate — Seal — Power to sue and be sued.

33-2210. Programs and courses offered — Certificates and degrees.

33-2211. Powers of state board for professional-technical education.

33-2212. Creation of advisory council — Members — Compensation.

33-2201. Assent to Smith-Hughes Act. — The state of Idaho hereby accepts the benefits and provisions of an act of Congress approved February 23, 1917, entitled "An act to provide for the promotion of vocational education, to provide for the cooperation with the states and the promotion of such education in agriculture and the trades and industries; to provide for the cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure," commonly known as the Smith-Hughes Act. [1919, ch. 53, § 1, p. 160; C.S., § 1002, I.C.A., § 32-1701.]

STATUTORY NOTES

Cross References. — Eastern Idaho Technical College created, §§ 33-2208 — 33-2212.

Federal aid for vocational rehabilitation, §§ 33-2301 — 33-2308.

Federal References. — The Smith-

Hughes Act, referred to at the end of this section, was compiled as 20 U.S.C.S. §§ 11-28, but was repealed by Act Aug. 5, 1997, P.L. 105-33..

33-2202. State board for professional-technical education — Powers and duties. — The state board of education is hereby designated as the state board for professional-technical education for the purpose of carrying into effect the provisions of the federal act, known as the Smith-Hughes Act, amendments thereto and any subsequent acts now or in the future enacted by the Congress affecting vocational education, and is hereby authorized to cooperate with the United States office of education, vocational division, or any other agency of the United States designated to administer such legislation, in the administration and enforcement of the provisions of said act, or acts, and to exercise such powers and perform such acts as are necessary to entitle the state of Idaho to receive the benefits of the same, and to execute the laws of the state of Idaho relative to professional-technical education; to administer the funds provided by the federal government and the state of Idaho under the provisions of this chapter for promotion of education in agricultural subjects, trade and

industrial subjects, home economics subjects and other subjects authorized by the board. Incident to the other powers and duties of the board for professional-technical education, the board may hold title to real property.

As used in this title, unless otherwise specifically defined, the term "professional-technical education" means secondary, postsecondary and adult courses, programs, training and services administered by the division of professional-technical education for occupations or careers that require other than a baccalaureate, master's or doctoral degree. The courses, programs, training and services include, but are not limited to, vocational, technical and applied technology education. They are delivered through the professional-technical delivery system of public secondary and postsecondary schools and colleges. [1919, ch. 53, part of § 2, p. 160; C.S., § 1003; I.C.A., § 32-1702; am. 1963, ch. 150, § 1, p. 451; am. 1970, ch. 4, § 1, p. 6; am. 1999, ch. 329, § 5, p. 852.]

STATUTORY NOTES

Cross References. — Advisory council to offer counsel and advice in the organization, establishment and conduct of the Eastern Idaho Vocational School, § 33-2212.

Industrial commission, duty to cooperate with, § 72-517.

Inventory of real property owned or leased in the city of Boise must be furnished to department of public works, § 67-3206.

Powers of state board for professional-technical education, § 33-2211.

Property transferred to another unit of government, §§ 67-2322 — 67-2325.

Federal References. — The Smith-Hughes Act, referred to in the first sentence of this section, was compiled as 20 U.S.C.S. §§ 11-28, but was repealed by Act Aug. 5, 1997, P.L. 105-33.

Effective Dates. — Section 2 of S.L. 1970, ch. 4 declared an emergency. Approved March 6, 1970.

33-2203. Further powers of board. — It shall have full power to formulate plans for the promotion of professional-technical education in such subjects as are an essential and integral part of the public school system of the state of Idaho, and to provide for the preparation of teachers of such subjects. It shall have full power to fix the compensation of such officials and assistants as may be necessary to administer the federal act herein referred to, and to pay such compensation and other necessary expenses of administration from funds appropriated in this chapter and from money received under the provisions of the federal act. It shall have authority to make studies and investigations relating to professional-technical education in such subjects, to promote and aid in the establishment of local communities of schools, departments or classes, giving training in such subjects; to cooperate with the local communities in the maintenance of such schools, departments or classes; to prescribe qualifications for teachers, directors and supervisors for such subjects, and to have full authority to provide for the certification of such teachers, directors and supervisors, subject to the laws and rules governing the state board of education; to cooperate in the maintenance of classes supported and controlled by the public for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general rule the qualifications to be possessed by persons engaged in the training of professional-technical teachers. [1919, ch. 53, part of § 2, p. 161; C.S.,

§ 1004; I.C.A., § 32-1703; am. 1999, ch. 329, § 6, p. 852.]

STATUTORY NOTES

Federal References. — The “federal act”, U.S.C.S. §§ 11 to 28, but which was repealed referred to in the second sentence, is the by Act Aug. 5, 1997, P.L. 105-33. Smith-Hughes Act, which was codified as 20

33-2204. Meetings of state board. — The state board of education, when acting as the state board for professional-technical education, shall hold four (4) regular meetings annually at such time and place as may be directed by said board, but special meetings may be called at any time and at a place designated in said call by the president. [1919, ch. 53, part of § 2, p. 161; C.S., § 1005; I.C.A., § 32-1704; am. 1999, ch. 329, § 7, p. 852.]

STATUTORY NOTES

Cross References. — Meetings of state board of education, § 33-104.

33-2205. State board to appoint administrator — Designation of assistants — Duties. — The state board of education shall appoint a person to serve as an administrator to the state board for professional-technical education, who shall be known as the administrator of professional-technical education. He shall designate, by and with the advice and consent of the state board for professional-technical education, such assistants as may be necessary to properly carry out the provisions of the federal acts and this chapter for the state of Idaho.

The administrator of professional-technical education shall also carry into effect such rules as the state board for professional-technical education may adopt, and shall coordinate all efforts in professional-technical education approved by the board with the executive secretary, and shall prepare such reports concerning the condition of professional-technical education in the state as the state board for professional-technical education may require. [1919, ch. 53, § 3, p. 161; C.S., § 1006; I.C.A., § 32-1705; am. 1963, ch. 150, § 2, p. 451; am. 1974, ch. 10, § 13, p. 49; am. 1999, ch. 329, § 8, p. 852.]

STATUTORY NOTES

Effective Dates. — Section 21 of S.L. 1974, ch. 10, provided the act should be in full force and effect on and after July 1, 1974.

33-2206. Reports. — The state board for professional-technical education shall make annually to the governor and legislature a report of all moneys expended for professional-technical education both from state and federal funds, and shall include such annual report in the annual report of the state board of education. [1919, ch. 53, § 6, p. 162; C.S., § 1007; I.C.A., § 32-1706; am. 1976, ch. 9, § 2, p. 25; am. 1999, ch. 329, § 9, p. 852.]

33-2207. Custody and disbursement of moneys appropriated. —

The state treasurer is hereby designated and appointed custodian of all moneys received by the state from the appropriation made by said act of Congress, and he is authorized to receive and to provide for the proper custody of the same and to make disbursement thereof in the manner provided in the said act, and for the purposes therein specified. He shall also pay out any moneys appropriated by the state of Idaho for the promotion of professional-technical education in accordance with the provisions of sections 33-2201 through 33-2207, Idaho Code, and upon the order of the state board for professional-technical education. [1919, ch. 53, § 4, p. 162; C.S., § 1009; I.C.A., § 32-1707; am. 1999, ch. 329, § 10, p. 852.]

STATUTORY NOTES

Federal References. — The act of Congress, referred to in this section, is the Smith-Hughes Act which was compiled as 20

U.S.C.S. §§ 11-28, but which was repealed by Act Aug. 5, 1997, P.L. 105-33.

33-2208. Eastern Idaho Technical College created. —

There is hereby established in Bonneville County, Idaho a postsecondary technical college to be designated and known as the Eastern Idaho Technical College, consisting of such professional-technical training programs, including academic courses necessarily included in such programs as the state board for professional-technical education may, from time to time, authorize. [1970, ch. 71, § 1, p. 183; am. 1972, ch. 110, § 1, p. 223; am. 1989, ch. 45, § 1, p. 57; am. 1998, ch. 85, § 1, p. 294; am. 1999, ch. 329, § 11, p. 852.]

STATUTORY NOTES

Cross References. — Acceptance of gifts, legacies and devises, § 33-3714.

Bursars and other fiscal officers at state educational institutions, §§ 33-3712 and 33-3713.

Interference with conduct of institutions of higher learning, §§ 33-3715 and 33-3716.

33-2209. College is body politic and corporate — Seal — Power to

sue and be sued. — The Eastern Idaho Technical College is hereby declared to be a body politic and corporate, with its own seal and having power to sue and be sued in its own name. The general supervision, government and control of the Eastern Idaho Technical College is vested in the state board for professional-technical education of the state of Idaho. [1970, ch. 71, § 2, p. 183; am. 1972, ch. 110, § 2, p. 223; am. 1989, ch. 45, § 2, p. 57; am. 1999, ch. 329, § 12, p. 852.]

STATUTORY NOTES

Cross References. — Advisory council to offer counsel and advice in the organization,

establishment and conduct of the Eastern Idaho Vocational School, § 33-2212.

RESEARCH REFERENCES

A.L.R. — Schools: tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training. 35 A.L.R.3d 758.

33-2210. Programs and courses offered — Certificates and degrees. — The Eastern Idaho Technical College shall offer and give instruction in professional-technical programs or courses as approved by the state board for professional-technical education. Such courses or programs may be given or conducted on or off campus, or in night school, summer school, or by extension courses. The state board for professional-technical education shall grant certificates or associate of applied science degrees for successful completion of courses or programs prescribed by the college. [1970, ch. 71, § 3, p. 183; am. 1972, ch. 110, § 3, p. 223; am. 1989, ch. 45, § 3, p. 57; am. 1998, ch. 85, § 2, p. 294; am. 1999, ch. 329, § 13, p. 852.]

STATUTORY NOTES

Cross References. — Advisory council to offer counsel and advice, § 33-2212.

33-2211. Powers of state board for professional-technical education. — The state board for professional-technical education shall have the power:

1. To adopt rules for its own government, the government of the Eastern Idaho Technical College and any professional-technical or vocational rehabilitation program, including programs under chapters 22 and 23, title 33, Idaho Code;
2. To employ professional and nonprofessional persons and to prescribe their qualifications;
3. To acquire and hold, and to dispose of, real and personal property, and to construct, repair, remodel and remove buildings;
4. To contract for the acquisition, purchase or repair of buildings, in the manner prescribed for trustees of school districts;
5. To dispose of real and personal property in the manner prescribed for trustees of school districts;
6. To convey and transfer real property of the college upon which no buildings used for instruction are situated, to nonprofit corporations, school districts, community college housing commissions, counties or municipalities, with or without consideration; to rent real or personal property for the use of the college, its students or faculty, for such terms as may be determined by the state board for professional-technical education; and to lease real or personal property of the college not actually in use for instructional purposes on such terms as may be determined by the state board for professional-technical education;
7. To acquire, hold, and dispose of, water rights;
8. To accept grants or gifts of money, materials, or property of any kind from any governmental agency, or from any person, firm, or association, on such terms as may be determined by the grantor;

9. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program; to accept grants from any source for the conduct of such program, and to conduct such program on, or off, campus;

10. To employ a president of the college and, with his advice, to appoint such assistants, instructors, specialists and other employees as are required for the operation of the college; to fix salaries and prescribe duties; and to remove the president or other employees in accordance with the policies and rules of the state board of education;

11. With the advice of the president, to prescribe the courses and programs of study, the requirements for admission, the time and standards for completion of such courses and programs, and to grant certificates or associate of applied science degrees for those students entitled thereto;

12. To employ architects or engineers in planning the construction, remodeling or repair of any building or property and, whenever no other agency is designated by law so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof;

13. To have at all times, general supervision and control of all property, real and personal, appertaining to the college, and to insure the same. [1970, ch. 71, § 4, p. 183; am. 1972, ch. 110, § 4, p. 223; am. 1989, ch. 45, § 4, p. 57; am. 1998, ch. 60, § 1, p. 217; am. 1998, ch. 85, § 3, p. 294; am. 1999, ch. 329, § 14, p. 852; am. 2005, ch. 65, § 1, p. 228; am. 2006, ch. 84, § 1, p. 247.]

STATUTORY NOTES

Cross References. — Compact for cooperation in higher education, §§ 33-3601 — 33-3604.

Inventory of chattel and personal property owned or leased by the state must be furnished to department of administration, § 67-5746.

Inventory of real property owned or leased in the city of Boise must be furnished to department of public works, § 67-3206.

Joint action by public agencies authorized to provide services and facilities, §§ 67-2326 — 67-2333.

Powers and duties of state board for professional-technical education, § 33-2202.

Property transferred to another unit of government, §§ 67-2322 — 67-2325.

Public employees retirement, § 59-1301 et seq.

Real and personal property, acquisition, use or disposal of by trustees of school districts, § 33-601.

Safety inspection of any building or property, §§ 67-2312 — 67-2314.

Water rights, § 42-101 et seq.

Amendments. — This section was amended by two 1998 acts — ch. 60, § 1, and ch. 85, § 3, each effective July 1, 1998 — which do not conflict and have been compiled together.

The 1998 amendment, by ch. 60, § 1, in subdivision 1. deleted “and regulations” preceding “for its own”; and in subdivisions 10. and 11. substituted “president” for “superintendent.”

The 1998 amendment, by ch. 85, § 3, in subdivision 1. deleted “and regulations” preceding “for its own”; and in subdivision 11. substituted “or associate of applied science degrees” for “of completion.”

The 2006 amendment, by ch. 84, rewrote subsection 1, which formerly read: “To adopt rules for its own government and the government of the Eastern Idaho Technical College.”

33-2212. Creation of advisory council — Members — Compensation. — The state board for professional-technical education may appoint an advisory council consisting of not less than twelve (12) nor more than fifteen (15) persons to offer counsel and advice in the organization, establishment and conduct of the Eastern Idaho Technical College. Members of the council will serve without salary but shall be compensated as provided

by section 59-509(b), Idaho Code. Members of said council shall be appointed from as nearly as is practicable the vocational area to be served by the Eastern Idaho Technical College as determined by the state board for professional-technical education. [1970, ch. 71, § 5, p. 183; am. 1972, ch. 110, § 5, p. 223; am. 1980, ch. 247, § 26, p. 582; am. 1989, ch. 45, § 5, p. 57; am. 1999, ch. 329, § 15, p. 852.]

STATUTORY NOTES

Cross References. — Standard travel pay and allowances set by state board of examiners, §§ 67-2007 and 67-2008.

Effective Dates. — Section 6 of S.L. 1970, ch. 71 declared an emergency. Approved March 2, 1970.

CHAPTER 23

VOCATIONAL REHABILITATION — FEDERAL AID

SECTION.

- 33-2301. Acceptance of federal acts.
- 33-2302. Custody and disbursement of funds.
- 33-2303. Powers of board in carrying out provisions.
- 33-2304. Plan of cooperation.
- 33-2305. Gifts and donations — Receipt and disposition.

SECTION.

- 33-2306. Report of state board.
- 33-2307. Care of persons suffering from renal diseases — Legislative intent.
- 33-2308. Establishment of vocational rehabilitation program to provide treatment to persons suffering from chronic renal diseases.

33-2301. Acceptance of federal acts. — The state of Idaho hereby renews its acceptance of the provisions and benefits of the act of Congress, entitled “An act to provide for the promotion of vocational rehabilitation of persons with disabilities, other than those who are legally blind, and their return to employment,” and further accepts “The Rehabilitation Act of 1973,” P.L. 93-112, 93rd Congress, and “The Rehabilitation Act Amendments of 1998,” P.L. 105-220, 105th Congress, and will observe and comply with all requirements of such acts. [1921, ch. 44, § 1, p. 70; I.C.A., § 32-1801; am. 1957, ch. 139, § 1, p. 231; am. 1967, ch. 7, § 1, p. 10; am. 1969, ch. 272, § 1, p. 814; am. 1974, ch. 105, § 1, p. 1274; am. 1978, ch. 12, § 1, p. 24; am. 1980, ch. 254, § 1, p. 666; am. 1985, ch. 6, § 1, p. 10; am. 1987, ch. 4, § 1, p. 4; am. 1993, ch. 183, § 1, p. 464; am. 1994, ch. 46, § 1, p. 74; am. 1995, ch. 2, § 1, p. 9; am. 1999, ch. 14, § 1, p. 22.]

STATUTORY NOTES

Cross References. — Federal aid for vocational education, § 33-2201 et seq.

Federal References. — The act of Congress, referred to in this section, as “An act to provide for the promotion of vocational rehabilitation of persons with disabilities, other than those who are legally blind, and their return to employment” is Act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which was repealed by Act Sept. 26, 1973, P.L. 93-112, Title V, § 500(a).

The Rehabilitation Act of 1973 and the

Rehabilitation Act Amendments of 1993, referred to in this section, are generally compiled as 29 U.S.C.S. § 701 et seq.

Effective Dates. — Section 2 of S.L. 1957, ch. 139, declared an emergency. Approved March 7, 1957.

Section 2 of S.L. 1967, ch. 7 declared an emergency. Approved February 2, 1967.

Section 2 of S.L. 1969, ch. 272 declared an emergency. Approved March 27, 1969.

Section 2 of S.L. 1974, ch. 105 declared an emergency. Approved March 27, 1974.

JUDICIAL DECISIONS

Cited in: Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc., 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

RESEARCH REFERENCES

A.L.R. — Construction and effect of § 504 of the Rehabilitation Act of 1973 (29 USCS § 794) prohibiting discrimination against otherwise qualified handicapped individuals in specified programs or activities. 44 A.L.R. Fed. 148.

33-2302. Custody and disbursement of funds. — The state treasurer is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the congress of the United States for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, and is authorized to receive and provide for the proper custody of the same and to make disbursements therefrom upon the order of the state board herein designated. [1921, ch. 44, § 2, p. 70; I.C.A., § 32-1802; am. 1994, ch. 46, § 2, p. 74.]

33-2303. Powers of board in carrying out provisions. — (1) The board heretofore designated as the state board for professional-technical education is hereby designated as the state board for the purpose of providing for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, and is empowered and directed to cooperate in the administration of said act of Congress; to prescribe and provide such courses of vocational services as may be necessary for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, and provide for the supervision of such services; to appoint such assistants as may be necessary to administer this act and said act of Congress in this state; to fix the compensation of such assistants and to direct the disbursement and administer the use of all funds provided by the federal government and the state of Idaho for the vocational rehabilitation of such persons.

(2) In order to provide vocational rehabilitation services the board of professional-technical education may enter into, or authorize a state vocational rehabilitation agency over which it has oversight to enter into, agreements with any person, corporation or association, approved by the board of professional-technical education to provide such services.

(3) Any person, corporation or association may make application to the board of professional-technical education for approval and certification to provide vocational rehabilitation services. The board of professional-technical education may either grant or deny certification or revoke certification previously granted after investigation of the applicant, in accordance with standards as set forth in rules promulgated by the board of professional-technical education, and consistent with national accreditation bodies. The board of professional-technical education may authorize a state vocational rehabilitation agency over which it has oversight to provide the approvals or certifications described in this subsection. [1921, ch. 44, § 3, p. 70; I.C.A.,

§ 32-1803; am. 1994, ch. 46, § 3, p. 74; am. 1999, ch. 329, § 16, p. 852; am. 2006, ch. 84, § 2, p. 247.]

STATUTORY NOTES

Cross References. — Industrial commission, duty to cooperate with, § 72-517.

State board for professional-technical education, § 33-2202.

Amendments. — The 2006 amendment, by ch. 84, added the subsection (1) designation; and added subsections (2) and (3).

Federal References. — “Said act of Con-

gress”, referred to in subsection (1), means Act June 2, 1920, ch. 219, as amended, which was repealed by Act Sept. 26, 1973, P.L. 93-112, Title V, § 500(a).

Compiler’s Notes. — The term “this act”, referred to in subsection (1), means S.L. 1921, ch. 44, which is compiled as §§ 33-2301 to 33-2306.

33-2304. Plan of cooperation. — It shall be the duty of the state board empowered to cooperate as aforesaid with the appropriate state agencies to formulate a plan of cooperation in accordance with the provisions of this act and said act of Congress. [1921, ch. 44, § 4, p. 70; I.C.A., § 32-1804; am. 1974, ch. 10, § 14, p. 49; am. 1994, ch. 46, § 4, p. 74.]

STATUTORY NOTES

Cross References. — Industrial commission, duty to cooperate with, § 72-517.

Federal References. — “Said act of Congress”, referred to in this section, means Act June 2, 1920, ch. 219, as amended, which was repealed by Act Sept. 26, 1973, P.L. 93-112, Title V, § 500(a).

Compiler’s Notes. — The term “this act”, referred to in this section, means S.L. 1921, ch. 44, which is compiled as §§ 33-2301 to 33-2306.

Effective Dates. — Section 21 of S.L. 1974, ch. 10, provided the act should be in full force and effect on and after July 1, 1974.

JUDICIAL DECISIONS

Cited in: Reifsteck v. Lantern Motel & Cafe, 101 Idaho 699, 619 P.2d 1152 (1980).

RESEARCH REFERENCES

A.L.R. — Construction and effect of § 504 of the Rehabilitation Act of 1973 (29 USCS § 794) prohibiting discrimination against

otherwise qualified handicapped individuals in specified programs or activities. 44 A.L.R. Fed. 148.

33-2305. Gifts and donations — Receipt and disposition. — The state board designated to cooperate as aforesaid in the administration of the federal act, is hereby authorized and empowered to receive such gifts and donations, either from public or private sources, as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons with disabilities, other than those who are legally blind, as in the judgment of the state board are proper and consistent with the provisions of sections 33-2301 through 33-2306, Idaho Code. All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by the said board to defray the expenses of vocational rehabilitation in special cases, including the payment of necessary expenses of persons undergoing services. A full report of all gifts

and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to the governor of the state and to the governor and legislature biennially by the state board. [1921, ch. 44, § 5, p. 70; I.C.A., § 32-1805; am. 1994, ch. 46, § 5, p. 74.]

STATUTORY NOTES

Federal References. — “[T]he federal act,” referred to in the first sentence, means 93-112, Title V, § 500(a). See § 33-2301. Act June 2, 1920, ch. 219, as amended, which was repealed by Act Sept. 26, 1973, P.L. 93-112, Title V, § 500(a). See § 33-2301.

33-2306. Report of state board. — The state board for professional-technical education shall make annually to the governor and legislature a report of all moneys expended for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, both from state and federal funds, and shall include such annual report in the annual report of the state board of education. [1921, ch. 44, § 6, p. 70; I.C.A., § 32-1806; am. 1976, ch. 9, § 3, p. 25; am. 1994, ch. 46, § 6, p. 74; am. 1999, ch. 329, § 17, p. 852.]

33-2307. Care of persons suffering from renal diseases — Legislative intent. — It is the intent of the legislature of Idaho to insure the establishment of a program for the care and treatment of persons suffering from chronic renal diseases. This program shall assist persons suffering from chronic renal diseases who require lifesaving care and treatment for such renal disease, but who are unable to pay for such services on a continuing basis. [1970, ch. 72, § 1, p. 186.]

33-2308. Establishment of vocational rehabilitation program to provide treatment to persons suffering from chronic renal diseases. — The board for professional-technical education shall establish a vocational rehabilitation program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques which will have a lifesaving effect in the care and treatment of persons suffering from these diseases. The board shall extend financial assistance to persons suffering from chronic renal diseases to assist such persons in obtaining the medical, nursing, pharmaceutical, technical and other services necessary to care for such diseases, including financial assistance for the rental or purchase of home dialysis equipment and supplies, the payment of medical insurance premiums and patient travel expenses. Provided that the board shall not provide financial assistance to such persons for expenses that are covered by medicare. The board shall promulgate rules that establish standards for determining eligibility for care and treatment under this program in order that treatment shall be provided to those who are financially unable to obtain such treatment without causing severe economic imbalance in the family economic unit. Such standards shall be established without reference to maximum or minimum income levels. [1970, ch. 72, § 2, p. 186; am. 1999, ch. 329, § 18, p. 852; am. 2008, ch. 199, § 1, p. 644.]

STATUTORY NOTES

Cross References. — State board for professional-technical education, powers and duties, §§ 33-2202 and 33-2211.

Amendments. — The 2008 amendment, by ch. 199, in the second sentence, inserted “to assist such persons,” “and other,” and “financial assistance for,” and added “the pay-

ment of medical insurance premiums and patient travel expenses”; added the third sentence; and in the fourth sentence, inserted “promulgate rules that.”

Effective Dates. — Section 3 of S.L. 1970, ch. 72 declared an emergency. Approved March 2, 1970.

CHAPTER 24

PROPRIETARY SCHOOLS

SECTION.

33-2401. Definitions.

33-2402. Registration of postsecondary educational institutions.

33-2403. Registration of proprietary schools.

33-2404. Agent's permit.

33-2405. Purchase statement.

33-2406. Surety bond.

SECTION.

33-2407. Student tuition recovery account — Conditions for recovery.

33-2408. Assessment for student tuition recovery account.

33-2409. Enforcement.

33-2410 — 33-2412. [Repealed.]

33-2401. Definitions. — For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

(1) “Accredited” means that a postsecondary educational institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board.

(2) “Agent” means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school.

(3) “Agent's permit” means a nontransferable written document issued to an agent by the board.

(4) “Board” means the state board of education.

(5) “Course” means instruction imparted in a series of lessons or class meetings to meet an educational objective.

(6) “Course or courses of study” means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise.

(7) “Degree” means any academic, vocational, professional-technical or honorary title or designation, mark, appellation, series of letters, numbers or words such as, but not limited to, “bachelor's,” “master's,” “doctorate,” or “fellow,” which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, vocational, professional-technical, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition and an associate of arts or associate of science degree awarded by a community college or other public or private postsecondary educational institution or other entity which may be used for any purpose whatsoever.

(8) “Postsecondary educational institution” means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to

operate, from a location within the state of Idaho, and which provides courses or programs that lead to a degree, or which provides, offers or sells degrees.

(9) "Proprietary school" means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees. [I.C., § 33-2401, as added by 1993, ch. 57, § 3, p. 154; am. 1995, ch. 107, § 1, p. 340; am. 1999, ch. 329, § 32, p. 852; am. 2006, ch. 240, § 2, p. 725.]

STATUTORY NOTES

Prior Laws. — The following former sections were repealed by S.L. 1993, ch. 57, § 2, effective July 1, 1993:

33-2401. (1963, ch. 13, § 224, p. 27).

33-2402. (1963, ch. 13, § 225, p. 27; am. 1985, ch. 222, § 1, p. 534).

33-2403. (1963, ch. 13, § 226, p. 27; am. 1972, ch. 166, § 1, p. 414).

33-2404. (1963, ch. 13, § 227, p. 27; am. 1985, ch. 222, § 2, p. 534).

33-2405. (1963, ch. 13, § 228, p. 27).

33-2406. (1963, ch. 13, § 229, p. 27).

33-2407. (1963, ch. 13, § 230, p. 27; am. 1972, ch. 166, § 2, p. 414; am. 1985, ch. 222, § 3, p. 534).

33-2408. (1963, ch. 13, § 231, p. 27).

33-2409. (1963, ch. 13, § 232, p. 27).

Amendments. — The 2006 amendment, by ch. 240, in subsection (1), substituted "postsecondary educational institution" for "school," and deleted, "or the United States department of education" from the end; in subsection (2), inserted "within the state of Idaho," deleted "courses in Idaho" following

"students for," and added "or on behalf of a proprietary school"; added subsection (5), and made related redesignations; in subsection (6), inserted "or courses," and added "either for academic credit or otherwise"; near the end of subsection (7), inserted "public or private postsecondary educational" and "or other entity"; deleted the undesignated paragraph of subsection (7), which pertained to the recognizing of the authority to confer degrees; deleted former subsections (7), (8), (10), and (11), which were the definitions for "Person," "Principal," "Registrant," and "Student," respectively; added present subsection (8); and rewrote subsection (9), which formerly read: "'Proprietary school' referred to as 'school' means any postsecondary or vocational or professional-technical educational school operated for a profit, or on a nonprofit basis, which maintains a place of business within the state of Idaho or solicits business within the state of Idaho offering degrees, career or job training programs and which is not specifically exempted by the provisions of this chapter."

33-2402. Registration of postsecondary educational institutions.

— (1) Unless exempted as provided herein, each postsecondary educational institution which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the board. A public postsecondary educational institution or agency supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register under this section. The board may exempt a nonprofit postsecondary educational institution from the registration requirement in accordance with standards and criteria established in rule by the board. The board may permit a postsecondary educational institution required to register under this section to instead register as a proprietary school under section 33-2403, Idaho Code, in accordance with standards and criteria established in rule by the board.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each degree, course or

program, for academic credit or otherwise, that a postsecondary educational institution intends to conduct, provide, offer or sell. Such rule shall also prescribe the standards and criteria to be utilized by the board for recognition of accreditation organizations.

(3) The board may deny the registration of a postsecondary educational institution that does not meet accreditation requirements or other standards and criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The board shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section based on the respective degrees, courses or programs that each such postsecondary educational institution intends to conduct, provide, offer or sell, not to exceed one hundred dollars (\$100) for each degree, course or program. Such annual registration fee shall be collected by the board and shall be dedicated for use by the board in connection with its responsibilities under this chapter. [I.C., § 33-2402, as added by 2006, ch. 240, § 4, p. 725.]

STATUTORY NOTES

Prior Laws. — Former § 33-2402, which comprised I.C., § 33-2402, as added by 1993, ch. 57, § 3, p. 154; am. 1997, ch. 187, § 1, p. 511 was repealed by S.L. 2006, ch. 240, § 3. Another former § 33-2402 was repealed. See Prior Laws, § 33-2401.

33-2403. Registration of proprietary schools. — (1) Unless exempted as provided in subsection (4) of this section, each proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the board or its designee.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each course or program, for academic credit or otherwise, that a proprietary school intends to conduct, provide, offer or sell.

(3) The board may deny the registration of a proprietary school that does not meet the standards or criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The following individuals or entities are specifically exempt from the registration provisions required by this section:

- (a) An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the board.
- (b) An individual or entity that offers courses recognized by the board which comply in whole or in part with the compulsory education law.
- (c) An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.
- (d) An individual or entity which is otherwise regulated, licensed or registered with another state agency pursuant to title 54, Idaho Code.

(e) Aviation school or instructors approved by and under the supervision of the federal aviation administration.

(f) An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation.

(g) An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days.

(h) A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

(i) An individual or entity that offers postsecondary credit through a consortium of public and private colleges and universities under the auspices of the western governors.

(5) The board shall assess an annual registration fee on each proprietary school required to be registered under this section. Such annual registration fee shall be composed of a fixed portion in an amount not to exceed one hundred dollars (\$100) for each proprietary school, and a variable portion based on the respective course or courses of study that each such proprietary school intends to conduct, provide, offer or sell, not to exceed one hundred dollars (\$100) for each course or courses of study. Such annual registration fee shall be collected by the board and shall be dedicated for use by the board in connection with its responsibilities under this chapter. [I.C., § 33-2403, as added by 2006, ch. 240, § 6, p. 725.]

STATUTORY NOTES

Prior Laws. — Former § 33-2403, which comprised I.C., § 33-2403, as added by 1993, ch. 57, § 3, p. 154 was repealed by S.L. 2006, ch. 240, § 5.

Another former § 33-2403 was repealed. See Prior Laws, § 33-2401.

33-2404. Agent's permit. — No individual may act as an agent of a proprietary school required to be registered under the provisions of this chapter unless that individual holds a valid agent's permit issued by the board and maintains at all times a surety bond as described in section 33-2406, Idaho Code.

The application for an agent's permit shall be furnished by the board and shall include the following:

(1) A statement signed by the applicant that he or she has read the provisions of this chapter and the rules promulgated pursuant thereto.

(2) An annual fee for each permit not to exceed fifty dollars (\$50.00). The board shall set by rule the amount of such annual agent's permit fee.

All agent's permits shall be renewed annually upon reapplication and proper qualifications on the first day of July. If courses are solicited or sold by more than one (1) agent, a separate permit is required for each agent.

The agent's permit shall consist of a pocket card and shall bear the name and address of the agent, the name and address of the proprietary school, and a statement that the bearer is an authorized agent of the proprietary school, and may solicit and sell courses for the proprietary school. The agent

shall surrender the agent's permit to the proprietary school upon termination of employment.

An agent representing more than one (1) proprietary school shall obtain a separate agent's permit for each proprietary school represented.

No individual shall be issued an agent's permit if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

An agent's permit shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended by the board for fraud or misrepresentation in connection with the solicitation for the sale of any course of study, for any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, or for the existence of any condition in respect to the agent or the proprietary school he or she represents, which if in existence at the time the agent's permit was issued, would have been grounds for denial for the agent's permit.

The agent shall carry the agent's permit with him or her for identification purposes when engaged in the solicitation for the sale and the selling of courses of study away from the premises of the proprietary school, and shall produce the agent's permit for inspection upon request.

The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of an agent's permit or proceeding to revoke or suspend an agent's permit of the board conducted pursuant to this section.

The issuance of an agent's permit pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any agent's permit to expressly or impliedly represent by any means whatever, that the board has made any evaluation, recognition, accreditation or endorsement of any proprietary school or of any course of study being offered for sale by the agent of any such proprietary school. Any oral or written statement, advertisement or solicitation by any proprietary school or agent which refers to the board shall state:

"(Name of school) is registered with the State Board of Education in accordance with Section 33-2403, Idaho Code."

It shall be unlawful for any agent holding an agent's permit under the provisions of this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the agent's permit constitutes an assurance by the board that any course of study being offered for sale by the agent or proprietary school will provide and require of the student a course of education or training necessary to reach a professional, education, or vocational objective, or will result in employment or personal earning for the student, or that the board has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the agent or proprietary school.

No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or unfair.

The board shall maintain records for five (5) years of each application for an agent's permit, each bond, and each issuance, denial, termination, suspension and revocation of an agent's permit.

The board or a student may bring an action pursuant to the Idaho rules of civil procedure for an agent's violation of the provisions of this chapter or any rule promulgated pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which party is the "prevailing party" and the prevailing party shall be entitled to the recovery of damages, reasonable attorney's fees and costs both at trial and on appeal.

Additionally, any agent who violates the provisions of this section is also guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars (\$5,000), or both. [I.C., § 33-2405, as added by 1993, ch. 57, § 3, p. 154; am. and redesisg. 2006, ch. 240, § 8, p. 725.]

STATUTORY NOTES

Prior Laws. — Former § 33-2404, which comprised I.C., § 33-2404, as added by 1993, ch. 57, § 3, p. 154 was repealed by S.L. 2006, ch. 240, § 7.

Another former § 33-2404 was repealed. See Prior Laws, § 33-2401.

Amendments. — The 2006 amendment, by ch. 240, renumbered the section from § 33-2405; throughout the section, inserted "agent" preceding "permit," or similar language and "proprietary" preceding "school"; in the introductory paragraph, inserted "of a proprietary school required to be registered under the provisions of this chapter," and corrected the

section reference; in subsection (2), substituted "annual fee for each permit not to exceed fifty dollars (\$50.00)" for "annual fee of twenty five dollars (\$25.00)," and added the last sentence; throughout the second undesignated paragraph of subsection (2) and near the end of the eighth undesignated paragraph, substituted "proprietary school" for "principal"; in the third undesignated paragraph of subsection (2), substituted "proprietary school" for "institution"; in the ninth undesignated paragraph substituted "agent" for "individual"; and in the final paragraph, deleted "principal or" preceding "agent."

33-2405. Purchase statement. — At the time of depositing any monies to purchase the product of any proprietary school, the proprietary school shall require the student to execute the following statement on an appropriate form which shall be maintained on record by the proprietary school in the individual student's file:

"I understand that (Name of proprietary school) is registered with the State Board of Education in accordance with Section 33-2403, Idaho Code. I also understand that the State Board of Education has not accredited or endorsed any course of study being offered by (Name of proprietary school), and that these courses will not be accepted for transfer into any Idaho public postsecondary institution."

[I.C., § 33-2406, as added by 1993, ch. 57, § 3, p. 154; am. and redesisg. 2006, ch. 240, § 9, p. 725.]

STATUTORY NOTES

Prior Laws. — A former § 33-2405 was repealed. See Prior Laws, § 33-2401.

Amendments. — The 2006 amendment, by ch. 240, renumbered the section from § 33-2406; inserted "proprietary" preceding the second occurrence of "school," and in the

statement, twice substituted "proprietary school" for "Institution," and added the language beginning "and that these courses."

Compiler's Notes. — Former § 33-2405 has been amended and redesignated as § 33-2404, pursuant to S.L. 2006, ch. 240, § 8.

33-2406. Surety bond. — A surety bond issued by an insurer duly authorized to do business in this state in favor of the state of Idaho for the indemnification of any student for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter or the rules promulgated pursuant to this chapter shall be required of an agent. The term of the bond shall extend over the period of the permit. The bond shall be supplied by the proprietary school.

The bond shall provide for liability in the penal sum of one hundred thousand dollars (\$100,000) for a proprietary school with one hundred (100) or more students; fifty thousand dollars (\$50,000) for a proprietary school with fifty (50) to ninety-nine (99) students; twenty-five thousand dollars (\$25,000) for a proprietary school with less than fifty (50) students. Notwithstanding the above, for a proprietary school that submits evidence acceptable to the board that the total unearned tuition of the proprietary school will not exceed ten thousand dollars (\$10,000) at any given time during the period of registration, a bond in the penal sum of ten thousand dollars (\$10,000) may be provided, regardless of the number of students.

The board may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior written notice to the board, and contemporaneously surrendering all agents' permits.

Each proprietary school shall certify, at the time of registration, the number of students presently enrolled at the proprietary school and shall make available, upon request of the board, proof of enrollment numbers. [I.C., § 33-2407, as added by 1993, ch. 57, § 3, p. 154; am. and redesisg. 2006, ch. 240, § 10, p. 725.]

STATUTORY NOTES

Prior Laws. — A former § 33-2406 was repealed. See Prior Laws, § 33-2401.

Amendments. — The 2006 amendment, by ch. 240, renumbered the section from § 33-2407; throughout the section, inserted "pro-

prietary"; and in the introductory paragraph, substituted "student" for "person."

Compiler's Notes. — Former § 33-2406 has been amended and redesignated as § 33-2405, pursuant to S.L. 2006, ch. 240, § 9.

33-2407. Student tuition recovery account — Conditions for recovery. — (1) There is hereby created in the state treasury the student tuition recovery account to be administered by the board for the purpose of relieving or mitigating pecuniary losses suffered by any student of a proprietary school registered under provisions of this chapter and who meets either of the following conditions:

(a) The student was enrolled in a proprietary school prior to that school's closure, had prepaid tuition, and suffered loss as a result of:

- (i) The closure of the proprietary school; or
- (ii) The proprietary school's breach or anticipatory breach of the agreement for the course of study.

For the purpose of this section, "closure" includes closure of a branch or satellite campus, the termination of either the correspondence or residence portion of a home study or correspondence course, and the termination of a course of study for some or all of the students enrolled in the course before the time the students have satisfactorily completed the program, or before a student who has been continuously enrolled in a course of study had been permitted to complete all the educational services and classes that comprise the course.

(b) The student obtained a judgment against the proprietary school for any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, and the student certifies that the judgment cannot be collected after diligent collection efforts.

(2) Payments from the account to any student shall be subject to rules and conditions as the board shall prescribe.

(a) The proprietary school shall provide to the board at the time of the proprietary school's closure the names and addresses of persons who were students of the proprietary school within sixty (60) days prior to its closure, and shall notify these students within thirty (30) days prior to the proprietary school's closure, of their rights under the student tuition recovery account and how to apply for payment.

(b) If the proprietary school fails to comply with the provisions of this section, the board shall attempt to obtain the names and addresses of these students and shall notify them, within ninety (90) days of the proprietary school's closure, of their rights under the student tuition recovery account and how to apply for payment. The board may require the proprietary school to reimburse the board for all reasonable costs and expenses incurred in notifying students.

(c) The board shall develop a form fully explaining a student's rights, which shall be used by the proprietary school or the board to comply with the notice requirement. The form shall include or be accompanied by a claim application form and an explanation of how to complete the application.

(d) Students filing for payment from the student tuition account as a result of the closure of a proprietary school must submit the claim within one (1) year from the proprietary school's or board's service of notice on the student or within two (2) years of the closure of the proprietary school, whichever is earlier.

(3) Students entitled to payment shall file with the board a verified application including, but not limited to each of the following:

(a) The student's name, address, telephone number and social security number.

(b) If any portion of the tuition was paid from the proceeds of a loan, the name of the lender and any state or federal agency that guaranteed the loan.

(c) The amount of the prepaid tuition.

(d) The dates the student started and ceased attending the proprietary school.

(e) A description of the reasons the student ceased attending the proprietary school.

(f) If the student ceased attending because of a breach or anticipatory breach, a statement describing in detail the nature of the economic loss incurred.

(4) Students entitled to payment based on a judgment shall file with the board a verified application indicating the student's name, address, telephone number and student identification, the amount of the judgment obtained against the proprietary school, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a certified copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment. The application shall be filed with the board within two (2) years after the date upon which the judgment became final.

(5) If the board pays the claim, the amount of the payment shall be the total amount of the student's economic loss, although the amount of the payment shall in no event exceed the amount of the student's tuition and cost of equipment and materials related to the course of study plus interest on all student loans used to pay tuition, equipment and materials. Upon payment of the claim, the board shall be subrogated to all of the student's rights against the proprietary school to the extent of the amount of the payment. If the board receives several claims from students, the payment of which cannot be totally covered by the student tuition recovery account, the claims shall receive a pro rata share of the account.

(6) If the board denies a claim, the board shall notify the student of the denial and of the student's right to request a hearing within thirty (30) days. The hearing shall be held pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code. If a hearing is not requested the board's decision shall be final.

(7) It is the intent of the legislature that, when a student is enrolled in a proprietary school that closes prior to the completion of the student's program, the student shall have the option for a teach-out at another proprietary school with a comparable course of study. The board shall seek to promote teach-out opportunities whenever possible, with the student to be informed by the board that he or she has the option of either payment from the account or a teach-out which shall be funded from the account.

(8) No liability accrues to the state of Idaho from claims made against the student tuition recovery account. [I.C., § 33-2408, as added by 1993, ch. 57, § 3, p. 154; am. and redesign. 2006, ch. 240, § 11, p. 725.]

STATUTORY NOTES

Cross References. — Notice by mail, § 60-109A.

Prior Laws. — A former § 33-2407 was repealed. See Prior Laws, § 33-2401.

Amendments. — The 2006 amendment, by ch. 240, renumbered the section from § 33-2408; throughout the section, inserted "proprietary"; in subsection (1), deleted "Idaho

resident who is a" preceding "student"; in subsection (1)(b), substituted "proprietary school" for "institution"; and in subsection (4), substituted "student identification" for "social security number."

Compiler's Notes. — Former § 33-2407 has been amended and redesignated as § 33-2406, pursuant to S.L. 2006, ch. 240, § 10.

33-2408. Assessment for student tuition recovery account. — The board shall assess each registered proprietary school which collects any moneys in advance of rendering services, an amount equal to one-tenth of one percent (.1%) of the total course cost for each student enrolled. The assessment per student shall not be less than one dollar (\$1.00), and not more than four dollars (\$4.00). In addition, for each student who prepays a proprietary school an amount in excess of four thousand dollars (\$4,000), the board shall assess the proprietary school one-half of one percent (.5%) of the prepaid amount which exceeds four thousand dollars (\$4,000). The board shall promulgate rules regarding collection and administration of the student tuition account.

At any time that the balance is in excess of fifty thousand dollars (\$50,000), the board shall suspend collection, except as provided in the event of a newly registered proprietary school or the transfer of ownership of a proprietary school as provided in this section, until such time as the balance is again below fifty thousand dollars (\$50,000).

Newly registered proprietary schools shall, regardless of the balance in the account, contribute the assessment set forth in this section for two (2) consecutive years.

If fifty-one percent (51%) or more of the ownership interest in a proprietary school is conveyed through sale or other means into different ownership, the new owner shall commence contributions under the provisions applying to a new applicant.

No more than ten percent (10%) per fiscal year shall be used for the administration of the tuition recovery program. The interest earned on money in the account shall be credited to the account.

In the event of a closure of a proprietary school registered under the provisions of this chapter, any assessments which have been made against those proprietary schools, but have not been paid into the account, shall be recovered to the extent feasible, or any payments from the student tuition recovery account made to students on behalf of any proprietary school may be recovered from that proprietary school by appropriate action taken by the board. The moneys so deposited in the student tuition recovery account shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those proprietary schools or students. [I.C., § 33-2409, as added by 1993, ch. 57, § 3, p. 154; am. and redesign. 2006, ch. 240, § 12, p. 725.]

STATUTORY NOTES

Prior Laws. — A former § 33-2408 was repealed. See Prior Laws, § 33-2401.

Amendments. — The 2006 amendment, by ch. 240, renumbered the section from § 33-2409; throughout the section, inserted "pro-

prietary"; in the introductory paragraph, substituted "proprietary school" for "institution"; and in the third paragraph, inserted "consecutive" preceding "years."

Compiler's Notes. — Former § 33-2408

has been amended and redesignated as § 33-2407, pursuant to S.L. 2006, ch. 240, § 11.

33-2409. Enforcement. — Any violation of the provisions of this chapter shall be referred to the attorney general by the board for appropriate action including, but not limited to, injunctive relief. [I.C., § 33-2409, as added by 2006, ch. 240, § 13, p. 725.]

STATUTORY NOTES

Prior Laws. — A former § 33-2409 was repealed. See Prior Laws, § 33-2401.
Compiler's Notes. — Former § 33-2409 has been amended and redesignated as § 33-2408, pursuant to S.L. 2006, ch. 240, § 12.

33-2410 — 33-2412. Violation a misdemeanor — Rules and regulations — Judicial review. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 1993, ch. 57, § 2, effective July 1, 1993:
33-2410. (1963, ch. 13, § 233, p. 27).
33-2411. (1963, ch. 13, § 234, p. 27).
33-2412. (1963, ch. 13, § 235, p. 27).

CHAPTER 25

COMMISSION FOR LIBRARIES

| SECTION. | SECTION. |
|---|--|
| 33-2501. Commission for libraries established. | 33-2505. Digital repository for state publications. |
| 33-2502. Board of library commissioners — Membership — Officers — Meetings — Compensation. | 33-2505A. Definitions. |
| 33-2503. Board of library commissioners — Powers and duties. | 33-2505B. Submission by state agencies. |
| 33-2504. State librarian appointed by board of library commissioners — Qualifications — Powers. | 33-2505C. Exemptions. |
| | 33-2506. Library services improvement fund — Established. |
| | 33-2507. State treasurer trustee of library funds when required. |

33-2501. Commission for libraries established. — The state of Idaho recognizes that libraries are uniquely suited to making the benefits of information and information technologies available to the citizens of the state of Idaho. Therefore, the Idaho commission for libraries is hereby established for the purpose of assisting libraries to build the capacity to better serve their clientele. [I.C., § 33-2501, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 2, p. 701.]

STATUTORY NOTES

Prior Laws. — The following sections of former chapter 25, title 33 were repealed by S.L. 1998, ch. 57, § 1, effective July 1, 1998:
§ 33-2501, comprised as 1903, ch. 283, § 1; reen. R.C., § 672; reen 1911, ch. 159, § 174, p. 550; reen C.L. 38:288; C.S., § 1032; I.C.A., § 32-2001; am. 1953, ch. 38, § 1, p. 57; am. 1974, ch. 10, § 15, p. 49; am. 1980, ch. 247, § 27, p. 582; am. 1990, ch. 44, § 1, p. 70.
§ 33-2502, comprised as 1903, p. 283, § 2, reen. R.C., § 673; am. 1911, ch. 159, § 175, p. 550; reen. C.L. 38:289; C.S., § 1033; I.C.A., § 32-2002; am. 1959, ch. 19, § 1, p. 40.
§ 33-2503, comprised as 1903, p. 283, § 3;

reen. R.C., § 674; reen. 1911, ch. 159, § 176, p. 551; C.S., § 1034; I.C.A., § 32-2003; am. 1959, ch. 19, § 2, p. 40.

§ 33-2504, comprised as I.C., § 33-2504, as added by 1965, ch. 252, § 1, p. 629; am. 1990, ch. 277, § 3, p. 780; am. 1991, ch. 126, § 1, p. 279.

§ 33-2505, comprised as I.C., § 33-2505, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2506, comprised as I.C., § 33-2506, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2507, comprised as I.C., § 33-2507, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2508, comprised as I.C., § 33-2508, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2509, comprised as I.C., § 33-2509, as

added by 1965, ch. 252, § 1, p. 629.

§ 33-2510, comprised as 1972, ch. 165, § 1, p. 413.

§§ 33-2511 and 33-2512, which comprised I.C., §§ 33-2511 and 33-2512, as added by 1990, ch. 277, §§ 2 and 4, p. 780 were repealed by S.L. 1991, ch. 126, § 1 and 1998, ch. 57, § 1.

§ 33-2513, comprised as I.C., § 33-2513, as added by 1991, ch. 132, § 1, p. 291; am. 1994, ch. 180, § 47, p. 420.

Amendments. — The 2006 amendment, by ch. 235, twice substituted “commission for libraries” for “state library” and added “for the purpose of assisting libraries to build the capacity to better serve their clientele.”

33-2502. Board of library commissioners — Membership — Officers — Meetings — Compensation. — The Idaho commission for libraries shall be governed by the board of library commissioners. The board of library commissioners shall be maintained within the office of the state board of education and shall consist of five (5) commissioners appointed by the state board of education. The state board of education shall annually appoint one (1) commissioner for a term of five (5) years. The board of library commissioners shall annually elect a chairman, vice chairman and other officers as it deems reasonably necessary. The board of library commissioners shall meet at least twice each year. Commissioners shall be compensated as provided by section 59-509(n), Idaho Code. [I.C., § 33-2502, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 3, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 33-2502 was repealed. See Prior Laws, § 33-2501.

Amendments. — The 2006 amendment, by ch. 235, rewrote the section, which formerly read: “**State library board — Membership — Officers — Meetings — Compensation.** The state library shall be governed by the state library board. The state library board shall be maintained within the office of the state board of education and shall consist of the state superintendent of public instruction or the superintendent’s designee, as ex officio member, and five (5) members appointed by the state board of education. On the first Monday of July, 1998, the state board

of education shall appoint one (1) member for a term of three (3) years, one (1) member for a term of four (4) years, and one (1) member for a term of five (5) years. Thereafter, the state board of education shall annually, on the first Monday of July, appoint one (1) member to the state library board to serve for a term of five (5) years. The state library board shall annually elect a chairman, vice chairman, secretary and other officers as it deems reasonably necessary. The state library board shall meet at least twice each year. Members shall be compensated as provided by section 59-509(n), Idaho Code.”

33-2503. Board of library commissioners — Powers and duties. — The board of library commissioners is designated as the policymaking body for the Idaho commission for libraries. The board of library commissioners shall have the following powers and duties:

- (1) To foster and promote library service in the state of Idaho.
- (2) To promulgate all rules and make policies as necessary for the proper conduct of its business.

(3) To receive donations of money, materials and other real and personal property, for the benefit of the Idaho commission for libraries. Title to donations in any form shall vest in the state of Idaho. Donations shall be held and controlled by the board of library commissioners.

(4) To promote and facilitate the establishment, use, and cooperation of libraries throughout the state so all Idahoans have access to the resources of those libraries.

(5) To support or deliver statewide library programs and services.

(6) To accept, receive, administer and expend, in accordance with the terms thereof, any moneys, materials or other aid granted, appropriated, or made available to Idaho by the United States, or any of its agencies, or by any other public or private source, for library purposes. The board of library commissioners is authorized to file any accounts required with reference to receiving and administering all such moneys, materials and other aid.

(7) To assist in the establishment of financing of a statewide program of cooperative library services, which may be in cooperation with any taxing unit, or public or private agency.

(8) To contract with other libraries or agencies, within or without the state of Idaho, to render library services to people of the state of Idaho. The board of library commissioners shall have authority to reasonably compensate other library units or agencies for the cost of the services provided by the other library unit or agency under any such contract. Such contracts and compensation shall be exempt from the provisions of chapter 57, title 67, Idaho Code. [I.C., § 33-2503, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 4, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 33-2503 was repealed. See Prior Laws, § 33-2501.

Amendments. — The 2006 amendment, by ch. 235, throughout the section, substituted “board of library commissioners” for “state library board” and “commission for libraries” for “state library”; deleted former

subsections (3), (6) and (11), pertaining, respectively, to the employment of a qualified librarian as the chief executive officer, the providing of services as the Idaho state government information center, and the authority to promulgate rules; and redesignated remaining subsections accordingly.

33-2504. State librarian appointed by board of library commissioners — Qualifications — Powers. — The board of library commissioners shall employ a qualified state librarian to serve as its chief executive officer. The state librarian shall be a graduate of an accredited library school.

The state librarian shall, subject to the provisions of chapter 53, title 67, Idaho Code, employ and fix the compensation of all other employees of the commission who shall be directly responsible to the state librarian. [I.C., § 33-2504, as added by 2006, ch. 235, § 6, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 33-2504, which comprised I.C., § 33-2504, as added by 1998, ch. 57, § 2, p. 211, was repealed by S.L. 2006,

ch. 235, § 5, effective July 1, 2006.

Another former § 33-2504 was repealed. See Prior Laws, § 33-2501.

33-2505. Digital repository for state publications. — Recognizing that an informed citizenry is a cornerstone for an effective democracy, and in order to provide free and continuous access to state publications, it shall be the duty of the state librarian to establish and maintain a publicly accessible digital repository of state publications prepared by state agencies. The digital repository is intended to collect state publications and make them readily available to all Idaho citizens. [I.C., § 33-2505, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 7, p. 701; am. 2008, ch. 81, § 1, p. 209.]

STATUTORY NOTES

Prior Laws. — Former § 33-2505 was repealed. See Prior Laws, § 33-2501.

Amendments. — The 2006 amendment, by ch. 235, substituted “commission for libraries” for “state library.”

The 2008 amendment, by ch. 81, rewrote the section heading, which formerly read,

“State librarian — Depository for public documents — Distribution” and rewrote the section to the extent that a detailed comparison is impracticable. See §§ 33-2505A to 33-2505C for provisions similar to this section prior to 2008 amendment.

33-2505A. Definitions. — As used in this chapter:

(1) “Digital repository” means electronic publications stored and accessible to the public online in a secure digital environment with redundant backup.

(2) “Format” includes any media used for state publications including, but not limited to, electronic, print, audio, visual and microform.

(3) “State agency” includes every constitutional and statutory office, officer, department, division, bureau, board, commission and agency of the state and, where applicable, all subdivisions of each.

(4) “State publication” means any information, regardless of format, published by a state agency and intended for distribution to the public. State publication does not include correspondence, internal confidential publications, office memoranda, university press publications, items detailed by sections 9-340A through 9-340H, Idaho Code, or other information excluded or exempted by rule promulgated by the board of library commissioners. [I.C., § 33-2505A, as added by 2008, ch. 81, § 2, p. 210.]

33-2505B. Submission by state agencies. — (1) The head of every state agency or their designee shall promptly submit to the commission for libraries copies of published information that are state publications.

(a) For state publications available only in print format, each state agency shall submit two (2) copies of each printed publication to the commission for libraries.

(b) For state publications available only in electronic format, each state agency shall submit one (1) digital copy of each electronic publication to the commission for libraries.

(c) For state publications available in both print and electronic format, each state agency shall submit two (2) print copies and one (1) digital copy of the publication to the commission for libraries.

(d) Of the two (2) print copies of state publications, one (1) copy shall be sent to the Idaho state historical society and one (1) copy shall be sent to the university of Idaho library for archival purposes.

(2) The commission for libraries shall promulgate such rules as are necessary and appropriate to accomplish the purpose of a digital repository for state publications. [I.C., § 33-2505B, as added by 2008, ch. 81, § 2, p. 210.]

33-2505C. Exemptions. — In the interest of economy and efficiency, the board of library commissioners may exempt a given state publication or class of publications from the requirements of sections 33-2505, 33-2505A and 33-2505B, Idaho Code, in full or in part, and shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, and make policies to implement this section. [I.C., § 33-2505C, as added by 2008, ch. 81, § 2, p. 211.]

33-2506. Library services improvement fund — Established. —

(1) Policy. The state of Idaho recognizes its responsibility to provide library services to people in all areas of the state. The state acknowledges that the ability of each Idahoan to access information has a critical impact on the state's economic development, educational success, provision for an informed electorate, and overall quality of life. Realizing that libraries of all types and in all parts of the state must be able to interact and cooperate in order to respond to these informational needs, the state of Idaho hereby creates and establishes in the state treasury the library services improvement fund.

(2) Purpose. The purpose of the library services improvement fund is to further the development of library services for all the people of Idaho. Moneys in the library services improvement fund are appropriated to and may be expended by the board of library commissioners at any time for the purposes provided in this section.

(3) Appropriations and revenues. The library services improvement fund shall have paid into it such appropriations as may be provided or other moneys and donations described in section 33-2503, Idaho Code.

(4) Payments.

(a) All payments from the library services improvement fund shall be paid out in warrants drawn by the state controller upon presentation of proper vouchers from the commission for libraries. Pending payments out of the library services improvement fund, the moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to idle moneys in the state treasury. Interest earned on the investments shall be returned to the library services improvement fund.

(b) No library entity is automatically entitled to receive any payments from the library services improvement fund. The board of library commissioners shall establish the criteria upon which actual need is to be determined in accordance with the purposes set forth in this section.

(c) Payments from the library services improvement fund may be used only for the purposes approved by the board of library commissioners. Funding decisions shall be solely within the discretion of the board of library commissioners. [I.C., § 33-2506, as added by 1998, ch. 57, § 2, p. 211; am. 1999, ch. 33, § 1, p. 69; am. 2006, ch. 235, § 8, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 33-2506 was repealed. See Prior Laws, § 33-2501.

Amendments. — The 2006 amendment, by ch. 235, throughout the section, substi-

tuted "board of library commissioners" for "state library board"; and in subsection (4)(a), substituted "commission for libraries" for "state library."

33-2507. State treasurer trustee of library funds when required. — When the conditions of the grant or appropriation so require, the state treasurer shall serve as trustee of funds appropriated to the state from any appropriation made by the federal government, the state, or any other agency for providing and equalizing library service in Idaho. [1963, ch. 188, § 16, p. 568; am. and redesiɡ. 1989, ch. 132, § 18, p. 286; am. and redesiɡ. 2002, ch. 312, § 9, p. 886.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2723.

CHAPTER 26

PUBLIC LIBRARIES

SECTION.

33-2601. Policy.

33-2602. Definitions.

33-2603. Cities may establish tax supported libraries.

33-2604. Board of trustees — Appointment — Term of office — Compensation.

33-2605. Board of trustees — Vacancies — Removal.

33-2606. Board of trustees — Meetings.

33-2607. Powers and duties of trustees.

33-2608. Library director — Duties — Other employees.

33-2609. Annual appropriations — Control of expenditures.

33-2610. Donations.

33-2611. Reports of trustees.

SECTION.

33-2612. Regional library systems — Purpose — Boundaries.

33-2613. Definitions.

33-2614. Petition for establishment.

33-2615. System board of directors.

33-2616. Powers and duties of the system board.

33-2617. Finance of regional systems — Budgets — Participating and non-participating units.

33-2618. Addition to or withdrawal from a regional system.

33-2619. Administration of act by board of library commissioners.

33-2620. Failure to return borrowed material.

33-2621 — 33-2638. [Repealed.]

33-2601. Policy. — It is hereby declared to be the policy of the state of Idaho, as a part of the provisions for public education, to promote the establishment and development of free library service for all the people in Idaho. It is the purpose of this act to assure an informed electorate by enabling the provision of free local library service, in the present and in the future, to children in their formative years and to adults for their continuing education. To carry out the purpose of this act, an independent, nonpartisan board shall govern the library.

Every library established in this chapter shall be forever free for the use of the residents of the city, always subject to such reasonable rules and regulations as the library board may find necessary to adopt. [I.C., § 33-2601, as added by 1993, ch. 186, § 2, p. 467.]

STATUTORY NOTES

Compiler's Notes. — The term "this act", as used in this section, means S.L. 1993, chapter 186, which is codified as §§ 33-2601 to 33-2620.

A former § 33-2601 which comprised S.L. 1963, ch. 13, § 96, p. 27; 1975, ch. 105, § 1, p. 215 which had been deemed to have superseded a former § 33-2602 (1901, p. 3, § 2; am. R.C., § 676; am. 1911, ch. 159, § 178, p. 551; reen. C.L. 38:292; C.S., § 1036; I.C.A., § 32-2102; am. 1943, ch. 170, § 1, p. 358; am. 1955,

ch. 129, § 1, p. 266) was amended and redesignated as § 33-2737 by § 1 of S.L. 1992, ch. 275. Section 1 of S.L. 1993, ch. 186 purported to repeal §§ 33-2601 through 33-2608, but the former § 33-2601 had already been amended and redesignated in 1992 prior to the repeal by S.L. 1993, ch. 186.

A second former § 33-2601 was transferred to § 33-2602 in 1963 due to the recodification of the education law by S.L. 1963, ch. 13.

33-2602. Definitions. — Unless a different meaning plainly is required in this chapter:

(1) "Nonpartisan" means not controlled or influenced by any single political party.

(2) "Board" means the group of trustees who manage the library.

(3) "Mayor" means the elected chief municipal officer of a city.

(4) "City manager" means a person appointed as chief municipal administrator by a city council.

(5) "City council" means the legislative body of a city. [I.C., § 33-2602, as added by 1993, ch. 186, § 3, p. 467.]

STATUTORY NOTES

Cross References. — Public library districts, § 33-2701 et seq.

Prior Laws. — Former § 33-2602, which comprised 1901, p. 3, § 1; am. R.C., § 675; reen. 1911, ch. 159, § 177, p. 551; reen. C.L. 38:291; am. 1919, ch. 137, § 1, p. 433; C.S., § 1035; I.C.A., § 32-2101; am. 1945, ch. 100, § 1, p. 150; am. 1955, ch. 130, § 1, p. 268; am. 1963, ch. 121, § 1, p. 350; am. 1990, ch. 378, § 11, p. 1046, and which had formerly been compiled as § 33-2601 but was transferred to § 33-2602 due to the recodification of the education title by S.L. 1963, ch. 13, was

repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

Compiler's Notes. — Another former § 33-2602, which comprised 1901, p. 3, § 2; am. R.C., § 676; am. 1911, ch. 159, § 178, p. 551; reen. C.L. 38:292; C.S., § 1036; I.C.A., § 32-2102; am. 1943, ch. 170, § 1, p. 358; am. 1955, ch. 129, § 1, p. 266, was superseded by S.L. 1963, ch. 13, § 96, p. 27; 1975, ch. 105, § 1, p. 215 which had been transferred to and compiled as § 33-2601 has been amended and redesignated as § 33-2737 by § 1 of S.L. 1992, ch. 275.

33-2603. Cities may establish tax supported libraries. — The city council of every city shall have power to establish a public library, and for such purpose may annually levy and cause to be collected a tax up to but not exceeding one-tenth percent (.10%) of market value for assessment purposes or fund a library out of allocations from the city's general fund. All such moneys shall be kept by the city treasurer separate and apart from other moneys of the city and be used exclusively for library purposes, provided that every city shall have power to contract for specified library service from an existing library, or become part of an existing library district, following the procedure outlined in section 33-2709, Idaho Code. [I.C., § 33-2603, as added by 1993, ch. 186, § 4, p. 467.]

STATUTORY NOTES

Prior Laws. — Former § 33-2603, which comprised 1901, p. 3, § 3; reen. R.C., § 677; am. 1911, ch. 159, § 179, p. 552; reen. C.L. 38:293; C.S., § 1037; I.C.A., § 32-2103; am. 1959, ch. 19, § 3, p. 40, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

33-2604. Board of trustees — Appointment — Term of office — Compensation. — For the government of such library there shall be a board of five (5) library trustees appointed by the mayor and council pursuant to section 50-210, Idaho Code, from among city residents. If the city government is organized pursuant to sections 50-801 through 50-813, Idaho Code, the city manager and the council shall appoint the board of trustees.

Appointment to the board shall be made solely upon consideration of the ability of such appointees to serve the interests of the people, without regard to sex, age, race, nationality, religion, disability or political affiliation. A member of the city council shall not be one (1) of the five (5) appointed trustees of the library board, but each year the council shall appoint one (1) of its members to be a liaison to the board, without voting rights.

The initial appointment of trustees shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Subsequent appointments shall be made for five (5) years from the date of appointment, and until their successors are appointed.

Members of the board shall serve without salary but may receive their actual and necessary budgeted expenses while engaged in authorized business of the library. [I.C., § 33-2604, as added by 1993, ch. 186, § 5, p. 467.]

STATUTORY NOTES

Prior Laws. — Former § 33-2604, which comprised 1901, p. 3, § 4; am. R.C., § 678; am. 1911, ch. 159, § 180, p. 553; reen. C.L. 38:294; C.S., § 1038; I.C.A., § 32-2104; am. 1959, ch. 19, § 4, p. 40, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

33-2605. Board of trustees — Vacancies — Removal. — The board shall report all vacancies to the council within five (5) working days. All such appointments shall be made in the same manner as appointments are originally made. Appointments to complete an unexpired term shall be for the remainder of the term only.

Any trustee may be removed by the city council by the unanimous vote of all of its members. [I.C., § 33-2605, as added by 1993, ch. 186, § 6, p. 4676.]

STATUTORY NOTES

Prior Laws. — Former § 33-2605, which comprised 1901, p. 3, § 5; reen. R.C., § 679; reen. 1911, ch. 159, § 181, p. 553; reen. C.L. 38:295; C. S., § 1039; I.C.A., § 32-2105, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

33-2606. Board of trustees — Meetings. — The board of trustees shall meet at least once in each quarter unless required by city ordinance to meet more frequently. One (1) of the meetings shall be designated as the

annual meeting. The purposes of the annual meeting are to elect the officers of the board, to establish a regular meeting date, and to review, amend, repeal or adopt bylaws, policies and procedures. Special meetings may be held from time to time as the board may determine, but written notice thereof shall be given to the members at least two (2) days prior to the day of the meeting. A quorum shall consist of three (3) voting members, but a smaller number may adjourn. All library board meetings are to be held pursuant to the open meeting law, sections 67-2340 through 67-2344, Idaho Code. [I.C., § 33-2606, as added by 1993, ch. 186, § 7, p. 467.]

STATUTORY NOTES

Prior Laws. — Former § 33-2606, which comprised 1901, p. 3, § 6; reen. R.C., § 680; am. 1911, ch. 159, § 182, p. 553; reen. C.L. 38:296; C.S., § 1040; I.C.A., § 32-2106; am. 1959, ch. 19, § 5, p. 40; am. 1981, ch. 85, § 1, p. 118, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

33-2607. Powers and duties of trustees. — In addition to the powers elsewhere contained in this chapter and notwithstanding the provisions of title 50, Idaho Code, the board of trustees of each city library shall have the following powers and duties:

- (1) To establish bylaws for its own governance;
- (2) To establish policies and rules of use for the governance of the library or libraries under its control; to exclude from the use of the library any and all persons who violate such rules;
- (3) To establish, locate, maintain and have custody of libraries to serve the city, and to provide suitable rooms, structures, facilities, furniture, apparatus and appliances necessary for library service;
- (4) With the approval of the city:
 - (a) To acquire real property by purchase, gift, devise, lease or otherwise;
 - (b) To own and hold real and personal property and to construct buildings for the use and purposes of the library;
 - (c) To sell, exchange or otherwise dispose of real or personal property when no longer required by the library; and
 - (d) To insure the real and personal property of the library;
- (5) To prepare and adopt a budget for review and approval by the city council;
- (6) To control the expenditures of money budgeted for the library;
- (7) To accept or decline gifts of money or personal property, in accordance with library policy, and under such terms as may be a condition of the gift;
- (8) To hire, supervise and evaluate the library director;
- (9) To establish policies for the purchase and distribution of library materials;
- (10) To attend all meetings of the board of trustees;
- (11) To maintain legal records of all board business;
- (12) To exercise such other powers, not inconsistent with law, necessary for the orderly and efficient management of the library. [I.C., § 33-2607, as added by 1993, ch. 186, § 8, p. 467.]

STATUTORY NOTES

Prior Laws. — Former § 33-2607, which comprised 1901, p. 3, § 7; reen. R.C., § 681; am. 1911, ch. 159, § 183, p. 554; reen. C.L. 38:297; C.S., § 1041; I.C.A., § 32-2107; am. 1959, ch. 19, § 6, p. 40, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

33-2608. Library director — Duties — Other employees. — The board of trustees of each city library shall appoint the library director, who shall serve at the pleasure of the board. The library director shall advise the board, implement policy set by the board, supervise all library staff and shall acquire library materials, equipment and supplies. The library director shall attend all board meetings but shall not vote.

With the recommendation of the library director, the board shall hire other employees as may be necessary for the operation of the library in accordance with city policies and procedures. These employees shall be employees of the city and subject to the city's personnel policies and classifications unless otherwise provided by city ordinance. [I.C., § 33-2608, as added by 1993, ch. 186, § 9, p. 467.]

STATUTORY NOTES

Prior Laws. — Former § 33-2608, which comprised 1901, p. 3, § 8; am. R.C., § 682; am. 1911, ch. 159, § 184, p. 554; reen. C.L. 38:298; C.S., § 1042; I.C.A., § 32-2108, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

33-2609. Annual appropriations — Control of expenditures. — The board shall prepare and adopt an annual budget, stating anticipated revenues and expenditures, indicating what support and maintenance of the library will be required for review and approval by the city council for the ensuing year.

All funds for the library shall be in the custody of the city treasurer unless otherwise provided by city ordinance, and shall be used only for library purposes. The board shall have control of library expenditures. Money shall be paid for library purposes, only upon properly authenticated vouchers of the board of trustees. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated for library purposes. The board may hold a separate checking account to be used to pay petty expenses of the library. This account shall be audited along with other library funds. [I.C., § 33-2609, as added by 1993, ch. 186, § 10, p. 467.]

STATUTORY NOTES

Prior Laws. — Another former §§ 33-2609 — 33-2620 (S.L. 1955, ch. 127, §§ 1-12; am. 1957, ch. 138, § 1, p. 230; am. 1959, ch. 19, §§ 7-9, p. 40) were repealed by S.L. 1963, ch. 188, § 22. For present law, see § 33-2701 et seq.

Compiler's Notes. — Former § 33-2609 was amended and redesignated as § 33-2612 by § 13 of S.L. 1993, ch. 186.

33-2610. Donations. — Donations or gifts for the benefit of the library shall be budgeted along with other library accounts and shall be used only

for library purposes. Money or other funds which are donated or given to the library may be expended by the board of trustees only in accordance with the city budget process. [I.C., § 33-2610, as added by 1993, ch. 186, § 11, p. 467.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2610 was amended and redesignated as § 33-2613 was repealed. See Prior Laws, § 33-2609. by § 14 of S.L. 1993, ch. 186.

Compiler's Notes. — Former § 33-2610

33-2611. Reports of trustees. — The board of trustees shall annually, not later than the first day of January, file with the board of library commissioners a report of the operations of the library for the fiscal year just ended. The report shall be of such form and contain such information as the board of library commissioners may require, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported. The board shall also report to the city council and mayor as required in section 50-210, Idaho Code. [I.C., § 33-2611, as added by 1993, ch. 186, § 12, p. 467; am. 2006, ch. 235, § 9, p. 701.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2611 was repealed. See Prior Laws, § 33-2609. commissioners" for "state library board."

Amendments. — The 2006 amendment, was amended and redesignated as § 33-2614 by ch. 235, twice substituted "board of library by § 15 of S.L. 1993, ch. 186.

33-2612. Regional library systems — Purpose — Boundaries. — It is the purpose of this act to provide a method by which the library boards which govern Idaho's libraries, now or hereafter established in accordance with the Idaho Code, may contract to form regional library systems, in order to provide improved library and information services for residents of a multi-county region. The boundaries for library regions in Idaho shall be established by the Idaho board of library commissioners. [1974, ch. 74, § 1, p. 1156; am. and redesign. 1993, ch. 186, § 13, p. 467; am. 2006, ch. 235, § 10, p. 701.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2612 was repealed. See Prior Laws, § 33-2609. formerly compiled as § 33-2609.

Amendments. — The 2006 amendment, Former § 33-2612 was amended and redesignated as § 33-2615 by § 16 of S.L. 1993, ch. 186. by ch. 235, substituted "board of library commissioners" for "state library board."

Compiler's Notes. — This section was The words "this act" refer to S.L. 1974, ch. 74, compiled as §§ 33-2612 — 33-2619.

33-2613. Definitions. — As used in this act, unless the context otherwise requires:

(1) "Library board" means the five (5) citizens appointed, or elected, to govern a public library, a school community library, or a library district, in accordance with chapters 26 and 27, title 33, Idaho Code.

(2) "Participating board" or "participating library" means a board or library or district which is cooperating and participating in a regional library system.

(3) "Region" means that geographic area, with boundaries established by the board of library commissioners, wherein library units are encouraged to work together.

(4) "Regional system" means two (2) or more library boards formally contracting a system approved by the board of library commissioners, officially designated as a regional library system under this act, and therein working together in specific efforts to extend and improve library services to their resident constituents.

(5) "System board" means the governing board comprised of representatives of library boards in a regional system, and which is authorized to direct and plan library service for a regional system to the extent and in the manner provided by this act. [1974, ch. 74, § 2, p. 1156; am. and redesign. 1993, ch. 186, § 14, p. 467; am. 2006, ch. 235, § 11, p. 701.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2613 was repealed. See Prior Laws, § 33-2609.

Amendments. — The 2006 amendment, by ch. 235, in subsections (3) and (4), substituted "board of library commissioners" for "state library board"; and redesignated all subsections numerically.

Compiler's Notes. — This section was formerly compiled as § 33-2610.

Former § 33-2613 was amended and redesignated as § 33-2616 by § 17 of S.L. 1993, ch. 186.

For words "this act," see Compiler's Notes, § 33-2612.

33-2614. Petition for establishment. — Any two (2) or more library boards may petition the board of library commissioners for the establishment of a regional system. Such petition shall be prepared in cooperation with the state librarian, on forms provided by the commission for libraries, and shall include but shall not be limited to the following information:

(1) A statement of purpose and an outline of the proposed program of the regional system.

(2) A list of the participating libraries, with a listing of the current tax levy and budget of each such participant; the names and addresses of the members of each library board, and a letter or resolution from each such board regarding participation in the regional system.

(3) A list of the counties in the geographic region as a whole, the number of persons who are within taxing districts supporting existing libraries, and the number of persons outside such districts but within a county in the region, and thus potentially eligible for service from the regional system being established.

(4) Proposed number of persons to be on the initial system board of directors.

(5) Proposed headquarters for the regional system, accompanied by a copy of a resolution by the governing authority for that library approving its designation as headquarters and, if a member of the staff of the headquarters is to be the administrator of the system, including approval of such designation.

The board of library commissioners shall consider any petition presented to it as provided in this act, and if it approves such petition it shall adopt a resolution officially designating such particular regional library system, describing the territory thereof, and designating the headquarters and the initial number of directors for the system board. [1974, ch. 74, § 3, p. 1156; am. and redesisg. 1993, ch. 186, § 15, p. 467; am. 2006, ch. 235, § 12, p. 701.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2614 was repealed. See Prior Laws, § 33-2609.

Amendments. — The 2006 amendment, by ch. 235, in the introductory paragraph, substituted “commission for libraries” for “state library”; in the introductory and final paragraphs, substituted “board of library commissioners” for “state library board”; and

redesignated all subsections numerically.

Compiler’s Notes. — This section was formerly compiled as § 33-2611.

Former § 33-2614 was amended and redesignated as § 33-2617 by § 18 of S.L. 1993, ch. 186.

For words “this act,” see Compiler’s Notes, § 33-2612.

33-2615. System board of directors. — Each regional system shall be governed by a board of directors, to be selected by and from the governing boards of the participating libraries.

Initially, as the system is formed, each participating library shall be entitled to one (1) representative on the system board, and those libraries legally serving a population base of more than ten thousand (10,000) shall also be entitled to a second representative.

Within two (2) weeks after receiving notice of approval of a petition for establishment, as provided for under this act, the board of each participating library shall select its representative or representatives, and certify the names and addresses of such representatives to the state librarian.

As additional libraries, now or hereafter established, petition to join the system, the board shall not exceed twenty-five (25) in number. When the board members total twenty-five (25), or earlier with the unanimous agreement of the participating boards, the system board shall develop a plan for equitable rotation of trustees, while retaining representation from a library in each county. The designated headquarters for the system shall always have representation on the board.

At their first meeting the members of the system board shall divide themselves by lot into terms of one (1) to five (5) years. Thereafter, all vacancies shall be filled in the same manner as the original appointments, and appointments to complete an unexpired term shall be for the residue of the term only.

No member of any system board shall serve on the system board for more than five (5) consecutive years, and in no event shall service on the system board exceed the term of office of the incumbent on the governing board of the participating library which he represents.

The system board shall annually elect from its membership a chairman and such other officers as it may deem necessary to conduct the affairs of the system.

Members of the system board may receive from the regional system their actual and necessary expenses while engaged in business of said system. [1974, ch. 74, § 4, p. 1156; am. and redesisg. 1993, ch. 186, § 16, p. 467.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2615 was repealed. See Prior Laws, § 33-2609.

Compiler's Notes. — This section was formerly compiled as § 33-2612.

Former § 33-2615 was amended and redes-

igned as § 33-2618 by § 19 of S.L. 1993, ch. 186.

For words "this act," see Compiler's Notes, § 33-2612.

33-2616. Powers and duties of the system board. — The system board shall serve as a liaison agency between the participating libraries and their governing bodies and library boards. The system board shall make such bylaws, rules and regulations as may be necessary for its own government and that of the regional system, none of which shall deprive any participating library board of any of its powers or property.

The system board shall have the following powers and responsibilities, all of which relate to the functioning of the regional system and the management and control of its funds and property;

(1) To develop a long-range plan of service for the regional system, and annually to submit to the board of library commissioners any changes in said long-range plan, and a detailed plan of proposed system development and service for the following year.

(2) To provide improved library service for residents of the regional system, in cooperation with participating libraries, and to this end to purchase books and other library materials, supplies and equipment, for the system services, and to employ such personnel as the system board finds necessary.

(3) To set the administrator's hours and rate of compensation for regional system duties, and to delegate such administrative powers as the board deems in the best interest of the system.

(4) To enter into contracts to receive service from or to give service to other libraries, or agencies, within the state or interstate, and to file copies of such contracts with the board of library commissioners.

(5) To be a public corporation, as is provided for library districts, and to contract in the name of the "Board of directors of the regional library system, Idaho" and in that name to sue and be sued and to take any action authorized by law.

(6) To acquire by purchase, lease, or otherwise, and to own and hold real and personal property and to construct buildings for the use of the regional system, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the system, and to insure the real and personal property of the system.

(7) To have control of the expenditure of all funds of the regional system, to accept by gift or donation any funds and real or personal property under such terms as may be a condition of the gift.

(8) To exercise such other powers, not inconsistent with law, necessary for the effective use and management of the regional system. [1974, ch. 74, § 5, p. 1156; am. and redesign. 1993, ch. 186, § 17, p. 467; am. 2006, ch. 235, § 13, p. 701.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2616 was repealed. See Prior Laws, § 33-2609.

Amendments. — The 2006 amendment, by ch. 235, in subsections (1) and (4), substituted “board of library commissioners” for “state library board”; and redesignated all

subsections numerically.

Compiler’s Notes. — This section was formerly compiled as § 33-2613.

Former § 33-2616 was amended and redesignated as § 33-2619 by § 20 of S.L. 1993, ch. 186.

33-2617. Finance of regional systems — Budgets — Participating and nonparticipating units. — Each regional system may be financed by any combination of available funds, federal, state, local, public and/or private. Counties, cities and library districts are hereby authorized and empowered to join in the creation, development, operation and maintenance of regional systems, and to appropriate and allocate funds for the support of such systems. All funds collected or contributed for the support of each regional system shall be controlled and administered under the direction of the system board, following procedures outlined in the library district statutes, and as directed by the board of library commissioners.

(1) **Participating Units.** Participating boards shall continue to control the funds appropriated or contributed for the support of the participating libraries, but may expend all or any part thereof for library services to be furnished by the regional system. Each participating board shall prepare its own annual budget as required by the Idaho Code, and said budget may include anticipated revenues or expenditures for regional system services. Tax levies made pursuant to each such budget shall be certified as provided by law.

(2) **System Budget.** Each system board shall prepare a preliminary budget for the system for the coming year, and shall by the last day of April forward said budget to the boards of participating libraries. This budget shall be published, and a hearing held thereon before the last day of May.

(3) **Nonparticipating Areas.** The system board shall also prepare a list of those areas within each county of the library region wherein public libraries, library districts, school-community libraries, or association libraries are not maintained as authorized in the Idaho Code. Such lists shall be forwarded to the board of library commissioners and to the board of county commissioners of each affected county. The system board shall include in its preliminary budget an estimate of the kinds of services which the system could provide to those areas without established libraries, and the cost of such services, and shall forward this to the appropriate boards of county commissioners. [1974, ch. 74, § 6, p. 1156; am. 1982, ch. 82, § 1, p. 150; am. and redesign. 1993, ch. 186, § 18, p. 467; am. 2006, ch. 235, § 14, p. 701.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2617 was repealed. See Prior Laws, § 33-2609.

Amendments. — The 2006 amendment, by ch. 235, in the introductory paragraph and in subsection (3), substituted “board of library commissioners” for “state library board”; and

redesignated all subsections numerically.

Compiler’s Notes. — This section was formerly compiled as § 33-2614.

Former § 33-2617 was amended and redesignated as § 33-2620 by § 21 of S.L. 1993, ch. 186.

Effective Dates. — Section 2 of S.L. 1982, ch. 82 declared an emergency. Approved March 17, 1982.

33-2618. Addition to or withdrawal from a regional system. —

(1) After the establishment of a regional system as provided in this act, the board of any library which is not a part of the system, and which is within the boundaries of a library region as established by the Idaho board of library commissioners, may petition the board of library commissioners for addition to the regional system.

Petitions for addition shall be prepared and processed as provided in this act for initial petitions, except that prior approval in writing shall be obtained by the petitioning board from the regional system board, and shall be attached to the petition when it is submitted to the board of library commissioners.

(2) After the establishment of a regional system as provided in this act, a participating library board may petition the board of library commissioners for withdrawal from the system. A petition for withdrawal must be received by the board of library commissioners at least sixty (60) days before the end of the fiscal year of the system.

All assets of a participating library remain the property of that library, and if a unit withdraws from a system the disposal of the joint assets of the system shall be determined by the board of library commissioners, who shall give consideration to such items as the amount of funds raised from each unit of the system, and the ability of the units to make further use of such property or equipment for library purposes. [1974, ch. 74, § 7, p. 1156; am. and redesign. 1993, ch. 186, § 19, p. 467; am. 2006, ch. 235, § 15, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 33-2618 was repealed. See Prior Laws, § 33-2609.

Amendments. — The 2006 amendment, by ch. 235, throughout the section, substituted “board of library commissioners” for “state library board.”

Compiler’s Notes. — This section was formerly compiled as § 33-2615.

For words “this act,” see Compiler’s Notes, § 33-2612.

33-2619. Administration of act by board of library commissioners. — The Idaho board of library commissioners shall administer the provisions of this act, and shall adopt such rules as are necessary for approval of regional system petitions, review and amendment of regional system plans and contracts, and such other matters as the board of library commissioners may deem advisable. [1974, ch. 74, § 8, p. 1156; am. and redesign. 1993, ch. 186, § 20, p. 467; am. 2006, ch. 235, § 16, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 33-2619 was repealed. See Prior Laws, § 33-2609.

Amendments. — The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” and de-

leted “and regulations” following “rules.”

Compiler’s Notes. — This section was formerly compiled as § 33-2616.

For words “this act,” see Compiler’s Notes, § 33-2612.

SECTION.

- tax supported library to a library district — Petitions and signatures — Election.
- 33-2708. Addition of territory not having a tax supported library to a library district — Alternate method.
- 33-2709. Existing tax-supported city libraries may join library districts.
- 33-2710. Determination of the property portion of the budget for consolidated libraries — District and district — District and city.
- 33-2710A, 33-2710B. [Amended and Redesignated.]
- 33-2711. Consolidation of library districts.
- 33-2711A. Adjustment of boundary lines between existing public library districts.
- 33-2712. [Repealed.]
- 33-2713. Dissolution of library district.
- 33-2713A. [Amended and Redesignated.]
- 33-2714. Library districts — Public corporations.
- 33-2715. Board of trustees — Selection — Number — Qualifications — Term — Oath — Appointment of first board.
- 33-2716. Board of trustees — Nomination and election — Recall — Vacancies.
- 33-2717. Board of trustees — One nomination — No election.
- 33-2717A. Declaration of intent for write-in candidate.
- 33-2717B. Withdrawal of candidacy.
- 33-2717C. Procedure for correction of ballots.

SECTION.

- 33-2718. Creation of trustee zones.
- 33-2719. Board of trustees — Meetings.
- 33-2720. Powers and duties of the board of trustees.
- 33-2721. Library director — Director team — Employees.
- 33-2722. Treasurer — Clerk.
- 33-2722A — 33-2722C. [Amended and Redesignated.]
- 33-2723. [Amended and Redesignated.]
- 33-2724. Taxes for the support of library district — Tax anticipation loans — Carry over authority — Capital assets replacement and repair fund.
- 33-2725. Library district budget — Public hearing — Notice — Adjustments.
- 33-2726. Fiscal year — Annual reports — Audit.
- 33-2727. Contracts — Joint powers agreements — Participation in non-profit corporations.
- 33-2728. Bond election.
- 33-2729. Plant facilities reserve fund and levy.
- 33-2730 — 33-2736. [Reserved.]
- 33-2737. School-community library districts.
- 33-2738. School-community library districts — Board of trustees — Trustee zones.
- 33-2739. School-community library districts — Board of trustees — Powers and duties — Fiscal year.
- 33-2740. School-community library districts — Consolidation — Reorganization into library districts.

33-2701. Purpose and policy. — It is hereby declared to be the policy of the state of Idaho, as a part of the provisions for public education, to promote the establishment and development of public library service for all the people of Idaho. By so declaring, the state acknowledges that the ability of its citizens to access information has a critical impact on the state's educational success, economic development, provision for an informed electorate, and overall quality of life. It is the purpose of this chapter to integrate, extend and add to existing library services and resources so that public library service may be available to all residents of the state from infancy through adulthood, beginning in the formative years and continuing for lifelong learning. [1963, ch. 188, § 1, p. 568; am. 1995, ch. 119, § 1, p. 513; am. 1996, ch. 71, § 2, p. 216; am. 2002, ch. 312, § 1, p. 886.]

STATUTORY NOTES

Cross References. — Cities, authority to establish libraries, § 33-2603.

Library trustees, powers and duties, § 33-2607.

JUDICIAL DECISIONS

Cited in: Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

33-2702. Definitions. — As used in this chapter:

(1) “Administrative only district” is a library district that does not serve the public directly and has no direct service outlets or collections, but which contracts with other library entities to provide various public library services.

(2) “City library” means a library established by a city ordinance and operating under the provisions of chapter 26, title 33, Idaho Code.

(3) “Home county” means the county where the designated district headquarters is located when a public library district’s boundaries include territory located in more than one (1) county.

(4) “Library director” or “library director team” means an employee or group of employees of a public library district charged with the administration and management of library services for that district.

(5) “Public library district trustee” means a qualified elector living within the boundaries of a public library district who is elected or appointed temporarily to fulfill the duties described in this chapter related to the governance of a public library district.

(6) “Public library service” means the provision of planned collections of materials and information services provided by a library established under the provisions of chapter 26 or 27, title 33, Idaho Code, and paid for primarily through tax support provided under these statutes. These services shall be provided at a facility, accessible to the public at regularly scheduled hours and set aside for this purpose. The services shall be governed by a citizen board appointed or elected for this purpose and shall be administered and operated by paid staff who have received appropriate training in library skills and management. The services shall meet standards established by the board of library commissioners.

(7) “Qualified elector” means any person voting, or offering to vote, at an election to create a library district, add territory thereto, or elect trustees thereof. A qualified elector must be, at the time of the election, a resident of the area involved for thirty (30) days prior to the date of the election, registered and an elector within the meaning of section 2, article VI, of the Constitution of the state of Idaho. [1963, ch. 183, § 2, p. 568; am. 1965, ch. 255, § 1, p. 648; am. 1993, ch. 303, § 1, p. 1124; am. 1996, ch. 71, § 3, p. 216; am. 2002, ch. 312, § 2, p. 886; am. 2006, ch. 235, § 17, p. 701.]

STATUTORY NOTES

Amendments. — The 2006 amendment, missioners” for “state library board” in subsection (6).

33-2703. Library districts — Territory — Establishment — Limitations. — A library district may be established by vote of the qualified electors of the proposed district in an election called and held as pro-

vided by this chapter, with the following limitations:

(1) The district may include incorporated or unincorporated territory or both in one (1) or more counties and may include any of the area thereof except as may be excluded by this section, and as finally fixed and determined by the board of county commissioners.

(2) The territory of the district shall be continuous, and no territory of an incorporated municipality shall be divided.

(3) In the initial establishment of a library district the following may be excluded:

(a) A municipality which is already providing library service as established according to section 33-2603, Idaho Code; or

(b) A library district which is already providing library service as established in accordance with the provisions of this chapter.

(4) If, subsequent to the establishment of a library district, any area thereof is annexed to a municipality which maintains a tax-supported library, this area shall cease to be a part of the library district and the city council of the municipality shall so notify the board of county commissioners.

(5) Any proposed library district shall have a population of more than one thousand five hundred (1,500) and an annual budget of not less than twenty-five thousand dollars (\$25,000) from ad valorem revenues. Any proposed library district not meeting the above criteria may apply to the board of library commissioners for an exemption. [1963, ch. 188, § 3, p. 568; am. 1967, ch. 93, § 1, p. 198; am. 1990, ch. 378, § 1, p. 1046; am. 1995, ch. 119, § 2, p. 513; am. 1996, ch. 71, § 4, p. 216; am. 2006, ch. 235, § 18, p. 701.]

STATUTORY NOTES

Amendments. — ⁴ The 2006 amendment, missioners" for "state library board" in subsection (5).
by ch. 235, substituted "board of library com-

33-2704. Petition — Verification — Notice and hearing. — (1) A petition or petitions, signed by fifty (50) or more qualified electors residing in the proposed library district, giving the name of the proposed district, describing the boundaries thereof including a map prepared in a draftsmanlike manner, and praying for the establishment of the territory therein described as a public library district, shall be filed with the clerk or clerks of the boards of county commissioners of the counties in which the proposed district is situated.

The petition or petitions shall be verified by at least one (1) qualified elector, which verification shall state that the affiant knows that all of the parties whose names are signed to the petition are qualified electors of the proposed district, and that their signatures to the petition were made in his presence. The verification may be made before any notary public.

(2) When the petition or petitions are presented to the board of county commissioners and filed in the office of the clerk of the board, the board shall set the time for a hearing, which time shall be not less than three (3) nor more than six (6) weeks from the date of the presentation and filing of the

petition. Notice of the time of hearing shall be published by the board at least once a week for two (2) weeks prior to the time set for the hearing, in a newspaper of general circulation within the county in which the proposed district is situated.

(3) The notice shall state that a library district is proposed to be established, giving the proposed boundaries and name thereof, and that any resident elector within the proposed boundaries of the proposed district may appear and be heard in regard to:

- (a) The form of the petition;
- (b) The genuineness of the signatures;
- (c) The legality of the proceedings; and
- (d) Any other matters in regard to the creation of the library district.

(4) Concurrently with the notice of hearing, the board of county commissioners shall notify, in writing, the governing body of any tax supported library within the boundaries of the proposed library district. If any governing body decides that it is not in the best interest of library services to be included within the proposed library district, they shall present a resolution stating this to the county commissioners, not less than one (1) week prior to the date of hearing.

(5) No later than ten (10) days after the hearing, the board of county commissioners shall make an order thereon with or without modification, based upon the public hearing and their determination of whether the proposed library district would be in keeping with the declared public policy of the state of Idaho in regard to library districts as more particularly set forth in section 33-2701, Idaho Code, and, shall accordingly fix the boundaries and certify the name of the proposed district in the order granting the petition. The boundaries so fixed shall be the boundaries of the district after its establishment is completed as provided in this chapter. [1963, ch. 188, § 4, p. 568; am. 1989, ch. 132, § 1, p. 286; am. 1990, ch. 378, § 2, p. 1046; am. 1995, ch. 119, § 3, p. 513; am. 1996, ch. 71, § 5, p. 216.]

33-2704A. Notice and public hearing. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which 1967, ch. 93, § 2, p. 198, was repealed by S.L. compromised I.C., § 33-2704A, as added by 1989, ch. 132, § 2.

33-2705. Conduct of election. — Upon the county commissioners having made the order referred to in subsection (5) of section 33-2704, Idaho Code, the clerk of the board of county commissioners shall cause to be published a notice of an election to be held for the purpose of determining whether or not the proposed library district shall be established under the provisions of this chapter. The date of this election shall be the next uniform election date as provided for in section 34-106, Idaho Code. Whenever more than one (1) petition is presented to the county commissioners calling for an election to create library districts, the first presented shall take precedence. Notice of the election shall be given, the election shall be conducted, and the returns thereof canvassed as provided for in chapter 14, title 34, Idaho Code,

and under the general election laws of the state of Idaho. The ballot shall contain the words "(Name) Library District—Yes" and "(Name) Library District—No," each followed by a box wherein the voter may express his choice by marking a cross "X." The board or boards of election shall make returns and certify the results to the boards of county commissioners within three (3) days after the election, and the board of county commissioners shall, within seven (7) days after the election, canvass the returns. If a majority of all votes cast be in the affirmative, the board of county commissioners shall, within seven (7) days after the returns have been canvassed, enter an order declaring the library district established, designating its name and boundaries including a map prepared in a draftsmanlike manner. The board of county commissioners shall transmit a copy of the order to the county recorder, county assessor, and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held. A copy of the order shall also be transmitted to the board of library commissioners. [1963, ch. 188, § 5, p. 568; am. 1965, ch. 255, § 2, p. 648; am. 1967, ch. 93, § 3, p. 198; am. 1989, ch. 132, § 3, p. 286; am. 1990, ch. 378, § 3, p. 1046; am. 1993, ch. 303, § 2, p. 1124; am. 1995, ch. 119, § 4, p. 513; am. 1996, ch. 71, § 6, p. 216; am. 2006, ch. 235, § 19, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502.
State tax commission, § 33-2705.

Amendments. — The 2006 amendment,

by ch. 235, substituted "board of library commissioners" for "state library board" at the end.

33-2706. Establishment of library district embracing more than one county. — When the proposed library district embraces more than one (1) county, the petition and procedure for praying for the establishment of the district shall be carried forward in each county as though that county were the only county affected. Each petition shall designate the same home county for the proposed district.

The board of county commissioners of the home county shall advise with the board of county commissioners in any other county affected to the end that the election shall be held in each county on the same day. The board of county commissioners in each county shall proceed in the conduct of the election as though the election were being held only in that county as set forth in section 33-2705, Idaho Code. After the canvass of the returns, the results in each other county shall be certified to the board of county commissioners of the home county, together with all ballots and tally sheets. The board of county commissioners of the home county shall canvass all returns and certify the results of the election to the board of county commissioners of any other county affected. The proposal shall be deemed approved only if a majority of all votes cast in each county were cast in the affirmative. If this is the case, the board of county commissioners of the home county shall enter an order declaring the library district to be created, designating its name and boundaries, including a map prepared in a draftsmanlike manner. A certified copy of the order shall be transmitted by

the board of county commissioners to the county recorder, the county assessor and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held. A copy of this order shall also be transmitted to the board(s) of county commissioners of any other county affected, which shall enter the order in its minutes. A copy of this order shall also be transmitted to the board of library commissioners. [1963, ch. 188, § 6, p. 27; am. 1996, ch. 71, § 7, p. 216; am. 2006, ch. 235, § 20, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502.

State tax commission, § 33-2705.

Amendments. — The 2006 amendment,

by ch. 235, substituted “board of library commissioners” for “state library board” at the end.

33-2707. Addition of territory not having a tax supported library to a library district — Petitions and signatures — Election. —

(1) Any area which does not have a tax supported library and which is contiguous to an existing library district may become a part of the district by petition and election.

(2) A petition may arise as set forth in section 33-2704, Idaho Code, in the area seeking to become a part of the library district. A true copy of the petition shall be transmitted to the board of trustees of the district, and to the board of county commissioners in each county affected. The board of trustees of the library district may approve or disapprove the petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When the notice carries the approval of the board of trustees of the district, the board of county commissioners in the county in which the petition arose shall enter its order calling for an election on the question. The election shall be held in the area described in the petition. Notice of the election shall be given, the election shall be conducted on the next uniform election date as provided in section 34-106, Idaho Code, and the returns thereof canvassed as provided in section 33-2705, Idaho Code. The ballot shall bear the question: “Shall become a part of the (Name) Library District Yes” and “Shall become a part of the (Name) Library District No,” each followed by a box in which the voter may express his choice by marking a cross “X.” The proposal shall be deemed approved only if the majority of the votes cast in the area seeking to become a part thereof is in the affirmative.

(4) If the proposal has been approved by the majority herein required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map prepared in a draftsmanlike manner. A copy of this order shall be transmitted to the board of trustees of the library district, to each board of county commissioners of the county in which the district lies, and to the board of library commissioners.

(5) The board of trustees of the library shall transmit a certified copy of this order to the county recorder, the county assessor of the home county and

to the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held.

(6) Addition of new territory to an existing library district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs appointment shall be made as provided in section 33-2716, Idaho Code. [1963, ch. 188, § 7, p. 568; am. 1990, ch. 378, § 4, p. 1046; am. 1995, ch. 119, § 5, p. 513; am. 1996, ch. 71, § 8, p. 216; am. 2006, ch. 235, § 21, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502. by ch. 235, substituted “board of library commissioners” for “state library board” in subsection (4).
State tax commission, § 33-2705.

Amendments. — The 2006 amendment,

33-2708. Addition of territory not having a tax supported library to a library district — Alternate method. — (1) An alternate method of adding territory to a library district may be initiated by a petition or petitions as set forth in section 33-2704, Idaho Code, except that the petitions must be signed by sixty percent (60%) of the qualified electors in the area to be annexed.

(2) A true copy of the petitions shall be transmitted to the board of trustees of the library district and to the board of county commissioners in each county affected. The board of trustees may approve or disapprove the petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When the notice carries the approval of the board of trustees of the district, the board of county commissioners of the county in which the petition arose shall proceed with the required hearing and resolution as outlined in section 33-2704, Idaho Code.

(4) When the proposal has the approval of the board of county commissioners, the board of trustees of the district and the board of county commissioners shall follow these procedures:

(a) If the proposal has been approved by the majority herein required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map drawn in a draftsmanlike manner, and transmit a copy of the order to the board of county commissioners in the county in which the petition arose. A copy of this order shall also be sent to the board of library commissioners.

(b) The board of trustees of the library district shall transmit a copy of the order to the county recorder, the county assessor of the home county, and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the order was granted.

(c) Addition of new territory to an existing library district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs, appointment shall be made as provided in section 33-2716, Idaho Code.

[I.C., § 33-2708, as added by 1990, ch. 378, § 5, p. 1046; am. 1996, ch. 71, § 9, p. 216; am. 2006, ch. 235, § 22, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502.

State tax commission, § 33-2705.

Amendments. — The 2006 amendment, by ch. 235, substituted “board of library com-

missioners” for “state library board” in subsection (4)(a).

Compiler’s Notes. — Former § 33-2708 was amended and redesignated as § 33-2709 by § 6 of S.L. 1990, ch. 378.

33-2709. Existing tax-supported city libraries may join library districts. — Any tax-supported city library may join an established library district by majority vote of the qualified electors of the city according to procedure set forth in section 33-2707, Idaho Code. A true copy of the petition and the district library board’s notice of approval or disapproval shall be sent to the city council. When the notice carries the approval of the district library board, the city council shall conduct the election and give notice of the results to the library district board and the board of county commissioners.

If the proposal has been approved by the majority required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map drawn in a draftsmanlike manner, and a copy shall be transmitted to the board of trustees of the library district, to the board of county commissioners of the county in which the petition arose, and to the board of library commissioners.

The board of trustees of the library district shall transmit a copy of the order to the county recorder, the county assessor of the home county and the state tax commission in a timely manner, but no later than December 15, in the year in which the election was held.

Addition of new territory to an existing library district shall not be considered an initial establishment. The existing district board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs, appointment shall be made as provided in section 33-2716, Idaho Code. [1963, ch. 188, § 8, p. 568; am. and redesign. 1990, ch. 378, § 6, p. 1046; am. 1996, ch. 71, § 10, p. 216; am. 2006, ch. 235, § 23, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502.

State tax commission, § 33-2705.

Prior Laws. — Another former § 33-2709, which comprised I.C., § 33-2722, as added by 1965, ch. 255, § 5, p. 648; am. 1967, ch. 93, § 4, p. 198; redesign. and am. 1989, ch. 132, § 4, p. 286, was repealed by S.L. 1990, ch. 378, § 7.

Amendments. — The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in the second paragraph.

Compiler’s Notes. — This section was formerly compiled as § 33-2708.

Former § 33-2709 was amended and redesignated as § 33-2715 by § 10 of S.L. 1989, ch. 132.

33-2710. Determination of the property portion of the budget for consolidated libraries — District and district — District and city. —

(1) When two (2) district libraries have agreed to consolidate, the property tax portion of the new consolidated district's first budget will be determined in the following manner.

The property tax portion of each district's most recent annual certified budget will be added together. The resulting figure will be considered the dollar amount of property taxes on which to base the first annual budget for the new consolidated district. The provisions of section 63-802, Idaho Code, shall be applied to this dollar amount.

(2) When a tax supported city library has voted to consolidate with a district library, the property tax portion of the new consolidated district's first annual budget will be determined in the following manner.

The city library budget figure will be defined as the budget for library services, whether from the general fund and/or the library fund, in the city's annual certified budget in effect on the date the election was held, less fines, fees, and any other identifiable revenues from nontax sources, and any grants made directly to the city library board. The city library budget figure will be added to the property tax portion of the public library district's annual certified budget in effect on the date the election was held. The resulting figure will be considered the dollar amount of property taxes on which to base the first annual budget for the new consolidated district. The provisions of section 63-802, Idaho Code, shall be applied to this dollar amount.

If the city has established a dedicated library fund in effect on the date the election was held, those dollars will be removed from the city budget in the fiscal year in which the newly consolidated district begins to levy to provide library services.

(3) In any consolidation, the dollar amount of property taxes for the new consolidated district's budget shall not exceed six hundredths percent (.06%) of the market value for assessment purposes of all taxable property within the district.

(4) In any consolidation, the existing bonded debt of any district or districts shall not become the obligation of the proposed consolidated library district. The debt shall remain an obligation of the property which incurred the indebtedness. [I.C., § 33-2710, as added by 1990, ch. 378, § 8, p. 1046; am. 1991, ch. 10, § 1, p. 26; am. 1995, ch. 119, § 6, p. 513; am. 1996, ch. 71, § 11, p. 216; am. 1997, ch. 117, § 6, p. 298; am. 2003, ch. 203, § 1, p. 543.]

STATUTORY NOTES

Prior Laws. — Former § 33-2710, which comprised I.C., § 33-2722A, as added by 1973, ch. 102, § 2, p. 172; am. and redesign. 1989, ch. 132, § 5, p. 286, was repealed by S.L. 1990, ch. 378, § 7.

Another former § 33-2710 (S.L. 1963, ch. 188, § 10, p. 568) was repealed by S.L. 1980, ch. 231, § 1.

Compiler's Notes. — Another former § 33-2710 was amended and redesignated as § 33-2716 by § 11 of S.L. 1989, ch. 132.

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that sections 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

33-2710A. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. — This section was amended and redesignated as § 33-2717 by § 12 of S.L. 1989, ch. 132.

33-2710B. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. — This section was amended and redesignated as § 33-2718 by § 13, S.L. 1989, ch. 132.

33-2711. Consolidation of library districts. — When there are two (2) or more library districts, which have at least one (1) common boundary, the boards of trustees of the library districts, meeting together, may determine that it is in the best interest of library service that the districts be consolidated, as herein provided.

The boards of trustees shall jointly prepare a petition describing the boundaries of the existing library districts, the names of the existing library districts, and praying for the reorganization of the territory therein described as one (1) or more library districts to be known as the "... (Name) Library District" and with boundaries as set forth in the petition.

The petition shall be signed by the chairpersons of the library boards upon majority approval of the respective boards involved in the consolidation.

The petition shall be forwarded to the clerk of the board of county commissioners in all counties affected, who shall verify the signatures, and shall file the petition. Thereupon, the board of county commissioners in all counties affected shall proceed with the hearing and resolution as outlined in section 33-2704, Idaho Code. Upon completion of the hearing, the board of county commissioners shall issue an order granting the petition.

In the order granting the petition of consolidation, the board of county commissioners in all counties affected shall certify the new boundaries and the name of the district.

A copy of the order shall be transmitted to the board of trustees of the library districts involved, and to the board of library commissioners.

Other notices required by law shall be filed by the board of trustees of the district, including a legal description and map of altered boundaries prepared in a draftsmanlike manner to be filed with the board(s) of county commissioners, the county recorder, the county assessor of the home county, the board of library commissioners, and the state tax commission in a timely manner, but no later than December 15, of the year in which consolidation takes place.

The board of county commissioners of the home county of the consolidated public library district shall within ten (10) days take action to reaffirm members of the board of trustees, or to appoint members of the board, who shall be chosen from the members of the boards initiating the consolidation.

These trustees shall serve until the next annual election of trustees or until their successors are elected and qualified as in section 33-2715, Idaho Code. The board of trustees shall take the oath of office as outlined in section 33-2715, Idaho Code. [I.C., § 33-2722B, as added by 1973, ch. 102, § 3, p. 172; am. and redesisg. 1989, ch. 132, § 6, p. 286; am. 1990, ch. 378, § 9, p. 1046; am. 1995, ch. 119, § 7, p. 513; am. 1996, ch. 71, § 12, p. 216; am. 2006, ch. 235, § 24, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502.

State tax commission, § 33-2705.

Compiler's Notes. — This section was formerly compiled as § 33-2722B.

Former § 33-2711 was amended and redesi-

gnated as § 33-2719 by § 14 of S.L. 1989, ch. 132.

Amendments. — The 2006 amendment, by ch. 235, in the sixth and seventh paragraphs, substituted "board of library commissioners" for "state library board."

33-2711A. Adjustment of boundary lines between existing public library districts. — When the boards of two (2) public library districts having a common boundary determine that it is in the best interest of public library service that an adjustment of library district boundaries be made, this adjustment may be made using the following procedure.

The board of trustees shall jointly prepare a petition describing the boundaries of both the existing and proposed public library district, including maps prepared in a draftsmanlike manner, and the names of the public library districts, praying for the reorganization of the territory therein described.

The petition shall be signed by the chairperson of the library boards upon majority approval of the respective boards involved in the boundary adjustment.

The petition shall be forwarded to the clerk of the board(s) of county commissioners in all counties affected, who shall verify the signatures, and shall file the petition. Thereupon, the boards of county commissioners in all counties affected shall proceed with the hearing and resolution as outlined in section 33-2711, Idaho Code. Upon the completion of the hearing, the board of county commissioners shall issue an order granting the petition. [I.C., § 33-2711A, as added by 1996, ch. 71, § 13, p. 216.]

33-2712. Notice of filing of petition or petitions for organizing a library district, for adding to or adjusting boundaries of library districts — Confirmation of existing library districts. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-2722C, as added by § 1, p. 422; am. and redesisg. 1989, ch. 132, § 7, p. 286, was repealed by S.L. 1995, ch. 1973, ch. 102, § 4, p. 172; am. 1987, ch. 201, § 8, effective July 1, 1995.

33-2713. Dissolution of library district. — A library district may be dissolved according to procedures followed in its original organization, but

not earlier than four (4) years after the date of its establishment. The ballot shall contain the words "Shall (Name) Public Library District be dissolved—Yes" and "Shall (Name) Public Library District be dissolved—No," each followed by a box wherein a voter may express his choice by marking a cross "X". If the library district embraces territory in more than one (1) county, an election for its dissolution shall be deemed approved only if a majority of the votes cast in each such county were cast in the affirmative. If, upon the canvass of ballots, it is determined that the proposition has been approved, the board of county commissioners of the home county shall enter its order to that effect and transmit a copy of said order to the board of county commissioners in any other county affected, and said order shall by them be made a matter of record. When any library district is dissolved, all property and assets of the library district shall be disposed of by the board of county commissioners of the home county. Receipts from the sale of assets and all unpaid taxes, when collected, shall be first used to retire any indebtedness of the district. Any remainder shall be apportioned to the counties embraced in the library district in proportion to the assessed valuation of each which was included in the library district, and placed in the respective county general expense fund. If, after the application of the tax monies and sale proceeds, indebtedness remains, the board of county commissioners of the home county shall provide for the payment of the remaining indebtedness from special levies certified to each county in proportion to the assessed valuation of each which was included in the district. The tax shall be collected by each county and remitted to the home county for payment of the remaining indebtedness. [1963, ch. 188, § 20, p. 568; am. 1980, ch. 187, § 1, p. 414; am. 1981, ch. 305, § 1, p. 627; am. 1986, ch. 21, § 1, p. 62; am. and redesisg. 1989, ch. 132, § 8, p. 286; am. 1996, ch. 71, § 14, p. 216.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2720.

Former § 33-2713 was amended and redesignated as § 33-2721 by § 16 of S.L. 1989, ch. 132.

Effective Dates. — Section 2 of S.L. 1980, ch. 187 declared an emergency. Approved March 27, 1980.

Section 2 of S.L. 1986, ch. 21 declared an emergency. Approved February 28, 1986.

33-2713A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — This section was amended and redesignated as § 33-2725 by § 20 of S.L. 1989, ch. 132.

33-2714. Library districts — Public corporations. — Each library district shall be a public corporation, may sue and be sued in its corporate name and may contract and be contracted with. [1963, ch. 188, § 17, p. 568; am. and redesisg. 1989, ch. 132, § 9, p. 286.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2717. Ignated as § 33-2724 by § 19 of S.L. 1989, ch. 132.

Former § 33-2714 was amended and redese-

33-2715. Board of trustees — Selection — Number — Qualifications — Term — Oath — Appointment of first board. — Each library district shall be governed by a board of trustees of five (5) members elected or appointed as provided by law, who at the time of their selection and during their terms of office shall be qualified electors of the district and if trustee zones have been established under section 33-2718, Idaho Code, shall be a resident of the trustee zone. One (1) trustee shall be elected at each annual trustee election, held on the uniform election date in May. The regular term of a trustee shall be for five (5) years, or until his successor has been elected and qualified. Within ten (10) days after his appointment an appointed trustee shall qualify and assume the duties of his office. An elected trustee shall qualify and assume the duties of his office at the annual meeting. All trustees qualify by taking the oath of office required of state officers, to be administered by one (1) of the present trustees or by a trustee retiring.

Following the initial establishment of a library district, the board of county commissioners of the home county within five (5) days shall appoint the members of the first board of trustees, who shall serve until the next annual election of trustees or until their successors are elected and qualified. The initial election of trustees shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Addition of new territory to an existing library district shall not be considered an initial establishment. The first board of trustees shall be sworn by a member of the board of county commissioners of the home county of the district.

At its first meeting, and after each trustee election, the board shall organize and elect from its membership a chairman and other officers necessary to conduct the affairs of the district.

Members of the board shall serve without salary but shall receive their actual and necessary expenses while engaged in business of the district. [1963, ch. 188, § 9, p. 568; am. 1983, ch. 107, § 1, p. 226; am. and redesign. 1989, ch. 132, § 10, p. 286; am. 1996, ch. 71, § 15, p. 216; am. 2002, ch. 312, § 3, p. 886.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2709. Ignated as § 33-2722 by § 17 of S.L. 1989, ch. 132.

Former § 33-2715 was amended and redese-

33-2716. Board of trustees — Nomination and election — Recall — Vacancies. — (1) The procedure for nomination and election of trustees of a library district shall be as provided for in chapter 14, title 34, Idaho Code, and in the general election laws of Idaho. If any two (2) or more candidates for the same trustee position have an equal number of votes, the

board of trustees shall determine the winner by a toss of a coin.

(2) Notwithstanding the limitations of chapter 17, title 34, Idaho Code, each library district trustee shall be subject to recall following procedures as closely as possible to the procedures described for the recall of county commissioners pursuant to chapter 17, title 34, Idaho Code.

Individuals signing a petition to recall a library trustee or voting in an election to recall a library trustee shall meet the requirements of section 33-2702, Idaho Code.

If, pursuant to section 33-2717, Idaho Code, no election was held for the trustee being recalled:

(a) The number of district electors required to sign the petition seeking a recall election must be not less than fifty (50), or twenty percent (20%) of the number of votes cast in the last trustee election held in the library district, whichever is the greater.

(b) To recall any trustee, a majority of the votes cast at the recall election must be in favor of the recall, and additionally, the number of votes cast in the recall election must equal or exceed the number of votes cast in the last trustee election held in the library district.

(3) A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office, or within thirty (30) days of when any trustees shall (a) die; (b) resign from office; (c) no longer reside in his respective trustee zone of residence; (d) no longer be a resident or qualified elector of the public library district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend two (2) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in this chapter.

A declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above-mentioned conditions is determined to exist.

The board of trustees shall appoint to fill the vacancy, a person qualified to serve as trustee of the public library district, provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the board of library commissioners of the appointment. This appointment shall be made within sixty (60) days of the declaration of vacancy. In the event that the board of trustees fails to exercise their authority, appointments shall be made by the board of county commissioners of the home county in which the district is located within thirty (30) days after the expiration of the sixty (60) days allowed for trustees for this action.

Any person appointed as provided in this chapter shall serve until the next annual election of public library district trustees following the appointment. At the annual election a trustee shall be elected to complete the unexpired term of the office which was declared vacant filled by appointment.

The elected trustee shall assume office at the first annual meeting of the public library district following the election. [I.C., § 33-2710, as added by 1980, ch. 231, § 2, p. 512; am. and redesign. 1989, ch. 132, § 11, p. 286; am. 1993, ch. 303, § 3, p. 1124; am. 1995, ch. 119, § 9, p. 513; am. 1996, ch. 71, § 16, p. 216; am. 2006, ch. 235, § 25, p. 701.]

STATUTORY NOTES

Prior Laws. — Another former § 33-2710 (S.L. 1963, ch. 188, § 10, p. 568) was repealed by S.L. 1980, ch. 231, § 1.

Amendments. — The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in the third paragraph of subsection (3).

Compiler’s Notes. — This section was

formerly compiled as § 33-2710.

Former § 33-2716 was redesignated as § 33-2723 by § 18 of S.L. 1989, ch. 132.

Section 33-2702, referred to in the second paragraph of subsection (2), was amended in 1996 and the substantive provisions of the section became part of the new subsection (4), which defines “qualified elector”.

33-2717. Board of trustees — One nomination — No election. — In any election for the office of trustee it is not necessary to conduct an election if:

(1) After the expiration of the date for filing written nominations only one (1) candidate has been nominated for each position to be filled; and, there has been no declaration of intent to be a write-in candidate filed as provided in section 33-2717A, Idaho Code; or

(2) If no candidate has filed a written nomination and only one (1) candidate for each position to be filled has filed a declaration of intent to be a write-in candidate as provided in section 33-2717A, Idaho Code. If either of these conditions are present, the board of trustees shall no later than seven (7) days before the scheduled date of the election declare the candidate elected as trustee, and the clerk of the library board shall immediately make and deliver to this person a certificate of election. The clerk of the library board shall also notify the clerk of the county commissioners of the home county and the commission for libraries. The procedure set forth in this section shall not apply to any other library district election. [I.C., § 33-2710A, as added by 1980, ch. 232, § 1, p. 512; am. and redesign. 1989, ch. 132, § 12, p. 286; am. 1992, ch. 4, § 1, p. 9; am. 1995, ch. 119, § 10, p. 513; am. 1996, ch. 71, § 17, p. 216; am. 2006, ch. 235, § 26, p. 701.]

STATUTORY NOTES

Cross References. — Commission for libraries, § 33-2501.

Amendments. — The 2006 amendment, by ch. 235, substituted “commission of libraries” for “state library” in subsection (2).

Compiler’s Notes. — This section was formerly compiled as § 33-2710A.

Former § 33-2717 was amended and redesignated as § 33-2714 by § 9 of S.L. 1989, ch. 132.

33-2717A. Declaration of intent for write-in candidate. — No write-in vote for library district trustee in a library district election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of library trustee if elected. The declaration of intent shall be filed with the clerk of the library board not later than twenty-five (25) days before the day of election. [I.C., § 33-2717A, as added by 1992, ch. 4, § 2, p. 9; am. 1996, ch. 71, § 18, p. 216.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1992, ch. 4 declared an emergency. Approved February 19, 1992.

33-2717B. Withdrawal of candidacy. — Any person who filed a declaration of candidacy in accordance with the provisions of this chapter may withdraw from the election by filing a notarized statement of withdrawal with the clerk of the library board. The statement shall contain sufficient information necessary to identify the person and the office sought. A person may withdraw at any time prior to the day of election. [I.C., § 33-2717B, as added by 1996, ch. 71, § 19, p. 216.]

33-2717C. Procedure for correction of ballots. — When any person withdraws his name from the election by filing a withdrawal of candidacy as provided in section 33-2717B, Idaho Code, the clerk of the library board shall cross the name of the person off the ballot and no votes cast shall be counted for that person. The clerk of the library board shall also inform the election board at each polling place that the person has withdrawn his candidacy from the election. [I.C., § 33-2717C, as added by 1996, ch. 71, § 20, p. 216.]

33-2718. Creation of trustee zones. — Each library district may be divided into five (5) trustee zones with each zone having approximately the same population. To the maximum extent possible, boundaries of trustee zones shall follow the existing boundaries of the electoral precincts of the county. They shall be revised, as necessary, to equalize population and to follow new electoral precinct boundaries following the publication of the report of each decennial census. In order for a library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and providing a legal description of each trustee zone. The board of trustees shall transmit the motion along with the legal description of the trustee zones to the board or boards of county commissioners in the county or counties where the library district is contained and to the board of library commissioners. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and legal description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, they shall be deemed to be in full force and effect. If a library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the library board of trustees in writing if a proposal is rejected.

If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may

be redefined and changed, but not more than once every two (2) years after a new set of trustee zones are formally established and in full force and effect.

At the next regular meeting of the board of trustees of the library district following the creation of trustee zones, the public library district board shall appoint from its membership or from other qualified electors resident in each trustee zone, a person from that zone to serve as a trustee until the next regularly scheduled trustee election from that zone. The initial election of trustees for the trustee zones shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively, with each zone being assigned an initial term length by a random drawing of the numbers one (1) through five (5). Thereafter, a trustee from each zone shall be elected once every five (5) years on a rotating basis with one (1) zone voting each year. Only residents of the zone electing a trustee may vote. The elector must be a resident of the same trustee zone as the candidate or candidates for library district trustee for whom the elector offers to vote for at least thirty (30) days preceding the election in which the elector desires to vote. [I.C., § 33-2710B, as added by 1983, ch. 107, § 2, p. 226; am. and redesign. 1989, ch. 132, § 13, p. 286; am. 1996, ch. 71, § 21, p. 216; am. 2002, ch. 312, § 4, p. 886; am. 2006, ch. 235, § 27, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502.

Amendments. — The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in the middle of the introductory paragraph.

Compiler's Notes. — This section was

formerly compiled as § 33-2710B.

Former § 33-2718 was amended and redesignated as § 33-2726 by § 21 of S.L. 1989, ch. 132.

Effective Dates. — Section 3 of S.L. 1983, ch. 107 declared an emergency. Approved March 29, 1983.

33-2719. Board of trustees — Meetings. — The annual meeting of a library district board shall be on the date of its first regular meeting following each trustee election. The purposes of the annual meeting are to administer the oath of office to the newly elected or re-elected trustee or trustees, to elect the officers of the board, to establish a regular meeting date, and to review, amend, repeal or adopt bylaws, policies and procedures. The regular meetings of the board of trustees of an administrative only district shall be held at least once in each quarter. All other library district boards shall meet at least once every two (2) months at a uniform day of the month as the board of trustees shall determine at its annual meeting. Special or adjourned meetings may be held from time to time as the board may determine, but written notice thereof shall be given to the members at least two (2) days prior to the day of the meeting. A quorum shall consist of three (3) members, but a smaller number may adjourn. All meetings shall be held under the provisions of section 67-2340 through 67-2347, Idaho Code. It is the duty of each trustee to attend all meetings of the board of trustees. [1963, ch. 188, § 11, p. 568; am. and redesign. 1989, ch. 132, § 14, p. 286; am. 1996, ch. 71, § 22, p. 216; am. 2002, ch. 312, § 5, p. 886.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2711. Ignated as § 33-2727 by § 22 of S.L. 1989, ch. 132.

Former § 33-2719 was amended and reded-

33-2720. Powers and duties of the board of trustees. — (1) The board of trustees of each library district shall have the following powers and duties consistent with the laws of the state of Idaho:

- (a) To establish bylaws for its own government;
- (b) To establish policies for the administration, operation and use of the library or libraries under its control;
- (c) To employ and evaluate a library director or library director team to administer the library;
- (d) To create job descriptions, personnel policies, and compensation packages for library personnel;
- (e) To establish an annual budget and to oversee the financial management of the library district;
- (f) To establish and locate libraries, branch libraries or stations to serve the district and to provide suitable rooms, structures, facilities, furniture, apparatus and appliances necessary for the conduct thereof;
- (g) To acquire by purchase, devise, lease, or otherwise, and to own and hold real and personal property and to construct buildings for the use and purposes of the library district, and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the district, and to insure the real and personal property of the district;
- (h) To accept gifts of real or personal property for the use and purposes of the library district;
- (i) To establish policies for the purchase and distribution of library materials;
- (j) To issue warrants, if used, in the manner specified for the issuance of warrants by school districts;
- (k) To invest any funds of the district in accordance with the public depository law and other applicable state and federal laws;
- (l) To pay actual and necessary expenses of members of the library staff when on business of the district;
- (m) To see to the proper conduct of library district elections;
- (n) To maintain legal records of all board business;
- (o) To exercise other powers, not inconsistent with law, necessary for the effective use and management of the library.

(2) Individual trustees shall have no authority to make decisions about the policies of the library except as specifically authorized by the board.

(3) It shall be the duty of each trustee to attend all board meetings and committee meetings for committees to which he or she has been assigned. [1963, ch. 188, § 12, p. 568; am. 1965, ch. 255, § 3, p. 648; am. and redesign. 1989, ch. 132, § 15, p. 286; am. 1996, ch. 71, § 23, p. 216; am. 2002, ch. 312, § 6, p. 886.]

STATUTORY NOTES

Cross References. — Investment of sinking fund, § 57-601.

Public depository law, § 57-101 et seq.

Compiler's Notes. — This section was

formerly compiled as § 33-2712.

Former § 33-2720 was amended and redesignated as § 33-2713 by § 8 of S.L. 1989, ch. 132.

33-2721. Library director — Director team — Employees. —

(1) Except for an administrative only district, the board of trustees of each library district shall appoint a library director or director team who shall administer the library district. The director or one (1) member of the director team assigned by the board shall serve as the secretary for the board without voting rights. The library director or director team shall advise the board, implement policy set by the board, and shall acquire library materials, equipment and supplies. The director or director team shall attend all executive sessions of the board of trustees, except those called to consider the evaluation, dismissal, or disciplining, or to hear complaints or charges against the library director or director team member. No library director or director team member shall be an employee or board member of a library or other agency with which the district has a contract to provide library services.

(2) The board shall fix and pay employee salaries and compensation, classify employees, adopt personnel policies, and discipline or discharge any library director or director team member for cause. The library director or director team shall hire or oversee the hiring of all other employees based on the policies, procedures, and job descriptions created by the library board, and shall discipline and discharge any employee for cause, as necessary, according to the written policies of the board. [1963, ch. 188, § 13, p. 568; am. and redesign. 1989, ch. 132, § 16, p. 286; am. 1996, ch. 71, § 24, p. 216; am. 2002, ch. 312, § 7, p. 886.]

STATUTORY NOTES

Prior Laws. — Former § 33-2721, which comprised 1963, ch. 188, § 21, p. 568, was repealed by S.L. 1989, ch. 132, § 23.

Compiler's Notes. — This section was formerly compiled as § 33-2713.

33-2722. Treasurer — Clerk. — The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as treasurer of the library district. This person shall, on taking office, give bond to the library district, with sureties approved by the board of trustees, in the amount of at least five thousand dollars (\$5,000), which bond shall be paid for by the district, and shall be conditioned upon faithful performance of the duties of his office and his accounting for all moneys of the library district received by him or under his control. The treasurer shall supervise all moneys raised for the library district by taxation or received by the district from any other sources and shall supervise all disbursements of funds of the district by order of the board of trustees.

Under the direction of the board of trustees, the treasurer shall have all moneys of the district deposited in accordance with the public depository law and other applicable state and federal laws.

The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as clerk of the library board. The clerk shall conduct library district elections, other than for excision, annexation, consolidation, or division; shall prepare and distribute legal notices; and shall have other duties as the board may prescribe. [1963, ch. 188, § 15, p. 568; am. and redesign. 1989, ch. 132, § 17, p. 286; am. 1996, ch. 71, § 25, p. 216; am. 2002, ch. 312, § 8, p. 886.]

STATUTORY NOTES

Cross References. — Public depository law, § 57-101 et seq.

Prior Laws. — Former § 33-2722 was amended and redesignated as § 33-2709 by

§ 4 of S.L. 1989, ch. 132 and was subsequently repealed by § 7 of S.L. 1990, ch. 378.

Compiler's Notes. — This section was formerly compiled as § 33-2715.

33-2722A — 33-2722C. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — These sections were amended and redesignated as §§ 33-2710 — 33-2712 by §§ 5-7 of S.L. 1989, ch. 132; how-

ever, § 33-2722A, redesignated as § 33-2710 by § 5 of S.L. 1989, ch. 132 was subsequently repealed by § 7 of S.L. 1990, ch. 378.

33-2723. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — This section was amended and redesignated as § 33-2507, pursuant to S.L. 2002, ch. 312, § 9.

33-2724. Taxes for the support of library district — Tax anticipation loans — Carry over authority — Capital assets replacement and repair fund. — (1) Any tax levied for library district purposes shall be a lien upon the property against which the tax is levied. The board of trustees shall determine and levy a tax upon each dollar of assessed valuation of property within the district for the ensuing fiscal year as shall be required to satisfy all maturing bond, bond interest, and judgment obligations. For the maintenance and operation of the library district, the board of trustees may also levy upon the taxable property within the district a tax not to exceed six hundredths percent (.06%) of market value for assessment purposes. These levies shall be certified to the board of county commissioners of each county in which the district may lie, not later than the second Monday in September of each year.

(2) In the first year after establishment, the board of a district may, for the purpose of organization and to finance general preliminary expenses of the district and before making a tax levy, incur an indebtedness not exceeding in the aggregate a sum equal to six hundredths percent (.06%) on

each one dollar (\$1.00) of market value for assessment purposes of all taxable property within the district. To repay the organization indebtedness incurred, the board shall have authority to levy and collect an additional tax not to exceed two hundredths percent (.02%) per annum on each one dollar (\$1.00) of market value for assessment purposes of all taxable property within the district. This additional levy shall not be used for any purpose other than repayment of the organizational indebtedness and interest thereon. This additional levy may be imposed for three (3) years.

(3) Library districts may accumulate fund balances at the end of a fiscal year and carry over these fund balances into the ensuing fiscal year, sufficient to achieve or maintain library district operations on a cash basis. A fund balance is the excess of the assets of a fund over its liabilities and reserves.

(4) The board of trustees of a library district may establish a capital assets replacement and repair fund within the library district budget for which district moneys may be budgeted and carried over from year to year. Disbursements from the fund may be made as the board may determine to maintain, repair, or replace the capital assets of the district to remodel or repair any existing library building; to furnish and equip any existing library building; and to purchase or replace major appliances and vehicles necessary to maintain and operate the services of the district. Moneys from the capital assets replacement and repair fund may not be used for the purchase of land or to build new library facilities or to build additions to current library facilities. Moneys in the fund may be invested in the manner provided in section 57-127, Idaho Code. In any year in which there is a capital assets replacement and repair fund in a library district, the amount held in the fund shall be reported in the library district's budget hearing announcement, along with a list of capital items which may eventually be replaced or repaired with moneys from the fund. The fund shall be included in the annual report filed with the board of library commissioners and in the audit required in section 33-2726, Idaho Code. [1963, ch. 188, § 14, p. 568; am. 1965, ch. 255, § 6, p. 648; am. 1974, ch. 141, § 1, p. 1355; am. and redesign. 1989, ch. 132, § 19, p. 286; am. 1990, ch. 378, § 10, p. 1046; am. 1995, ch. 119, § 11, p. 513; am. 1996, ch. 71, § 26, p. 216; am. 2002, ch. 155, § 1, p. 450; am. 2006, ch. 235, § 28, p. 701.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 235, substituted "board of library commissioners" for "state library board" in subsection (4).

Compiler's Notes. — This section was

formerly compiled as § 33-2714.

Effective Dates. — Section 7 of S.L. 1965, ch. 255 declared an emergency. Approved March 29, 1965.

33-2725. Library district budget — Public hearing — Notice — Adjustments. — The board of trustees of each library district shall prepare for the ensuing fiscal year a budget and prior to its adoption shall have called and caused to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed, or having general circulation within the

district or in the county or counties in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of this notice, a summary statement of the budget for the ensuing year prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison.

During the year the board of trustees may proceed to adjust the budget as adopted to reflect the receipt of unanticipated revenue, grants, or donations from federal, state or local government or private sources, provided that there shall be no increase in the property tax portion of the annual certified budget. Prior to the adoption of the budget adjustment, the library board shall have called and cause to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed or having general circulation within the district or in the county or counties in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of this notice, a summary of the budget and the adjustments prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison. [I.C., § 33-2713A, as added by 1982, ch. 177, § 1, p. 465; am. and redesign. 1989, ch. 132, § 20, p. 286; am. 1996, ch. 71, § 27, p. 216; am. 2002, ch. 312, § 10, p. 886.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2713A.

33-2726. Fiscal year — Annual reports — Audit. — The fiscal year of each library district shall commence on the first day of October of each year. The board of trustees of each library district shall annually, not later than the first day of January, file with the board of library commissioners a report of the operations of the district for the fiscal year just ended. The report shall be on the form and contain the information that the board of library commissioners requires, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported.

The board of trustees of each library district shall cause to be made a full and complete audit of the books and accounts of the district as required in section 67-450B, Idaho Code. [1963, ch. 188, § 18, p. 568; am. 1982, ch. 52, § 1, p. 80; am. and redesign. 1989, ch. 132, § 21, p. 286; am. 1993, ch. 327, § 17, p. 1186; am. 1993, ch. 387, § 7, p. 1417; am. 1996, ch. 71, § 28, p. 216; am. 2006, ch. 235, § 29, p. 701.]

STATUTORY NOTES

Cross References. — Board of library commissioners, § 33-2502.

Library district budget, § 33-2725.

Amendments. — The 2006 amendment,

by ch. 235, twice substituted "board of library commissioners" for "state library board" in the introductory paragraph. **Compiler's Notes.** — This section was formerly compiled as § 33-2718.

33-2727. Contracts — Joint powers agreements — Participation in nonprofit corporations. — (1) In lieu of, or in addition to, establishing an independent library, the board of trustees may purchase specified library services by contract from any taxing unit, or public or private agency maintaining a library. Contracts for services shall contain provisions on annual budget procedures, accounting for funds, dispute resolution procedures, ownership of assets purchased with district funds, annual reports and procedures for ending the contract.

(2) The board of trustees of a library district may sell specified library services to any taxing unit, or public or private agency which contracts to make an acceptable annual appropriation for these services.

(3) Any purchase or sale of library services shall be under a written contract that is in accordance with all applicable state and federal laws.

(4) In order to improve or expand public library services, library districts may participate in the joint exercise of powers with other public agencies as specified by law.

(5) In order to improve or expand public library services, library districts may become corporate partners in nonprofit corporations. [1963, ch. 188, § 19, p. 568; am. 1965, ch. 255, § 4, p. 648; am. and redesi. 1989, ch. 132, § 22, p. 286; am. 1996, ch. 71, § 29, p. 216; am. 2002, ch. 312, § 11, p. 886.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2719.

33-2728. Bond election. — (1) The purposes for which bonds may be issued shall be: To acquire, purchase, or improve a library site or sites; to build a library or libraries, or other building or buildings; to demolish or remove buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all facilities and appliances necessary to maintain and operate the buildings of the library; and to purchase motor vehicles for use as bookmobiles.

The library district may issue bonds in an amount not to exceed four-tenths percent (.4%) of the market value for assessment purposes of property within the district, less any aggregate outstanding indebtedness.

The board of trustees of any library district, upon approval of a majority thereof, may call a bond election on the question as to whether the board shall be empowered to issue bonds of the district in an amount and for a period of time to be stated in the notice of election. The notice of bond elections, the qualification of bond electors, the conduct of the election, and the canvass of election and determination of the result of election shall be in accordance with chapter 14, title 34, Idaho Code, and with the general election laws of the state of Idaho. The majority required to pass a bond issue shall be two-thirds (2/3) of those voting in the election. The issuance of

bonds, the expenditure of bond proceeds and the repayment of the bonds shall all be as specified in school district law.

(2) District library bond funds may not be used to purchase or expand a building for a contracting agency providing library services unless the district library gains an ownership share in the building proportional to the percentage of district bond funds used to purchase or expand the building. [I.C., § 33-2723, as added by 1965, ch. 255, § 5, p. 648; am. 1980, ch. 350, § 16, p. 887; am. and redesis. 1989, ch. 132, § 24, p. 286; am. 1993, ch. 303, § 4, p. 1124; am. 2002, ch. 155, § 2, p. 450.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-2723.

33-2729. Plant facilities reserve fund and levy. — The library district board of trustees is authorized to create a plant facilities reserve fund as set forth in sections 33-804 and 33-901, Idaho Code.

District library facilities plant facilities reserve funds may not be used to purchase or expand a building for a contracting agency providing library services unless the district library gains an ownership share in the building proportional to the percentage of district bond funds used to purchase or expand the building. [I.C., § 33-2729, as added by 1991, ch. 35, § 1, p. 71; am. 2002, ch. 155, § 3, p. 450.]

33-2730 — 33-2736. [Reserved.]

33-2737. School-community library districts. — (a) The board of trustees of any school district in which is situated no incorporated city having a population in excess of one thousand (1,000), and in which no public library is maintained under any other provision of law, shall, upon petition of twenty (20) or more school district electors, submit to the school district electors of the district the question whether there shall be a public library established by the district for the benefit of the citizens thereof.

(b) The election on the question shall be held at the same time as the election of school district trustees, next following the filing of the petition, and notice shall be given, the election conducted, and the returns canvassed, as provided in chapter 4, title 33, Idaho Code.

(c) If a majority of the school district electors voting in the election vote in favor of the question a school-community library district shall be established.

(d) No new school-community library shall be established after June 30, 1994. [1963, ch. 13, § 96, p. 27; am. 1975, ch. 105, § 1, p. 215; am. and redesis. 1992, ch. 275, § 1, p. 848; am. 1996, ch. 71, § 30, p. 216.]

STATUTORY NOTES

Cross References. — Adding area to established library district, § 33-2708.

School librarian, certificate required, § 33-1201.

Compiler's Notes. — This section was deemed to supersede a former section formerly compiled as § 33-2602 (1901, p. 3, § 2; am. R.C., § 676; am. 1911, ch. 159, § 178, p. 551; reen. C.L. 38:292; C.S., § 1036; I.C.A.,

§ 32-2102; am. 1943, ch. 170, § 1, p. 358; am. 1955, ch. 129, § 1, p. 266.)

This section was formerly compiled as § 33-2601.

33-2738. School-community library districts — Board of trustees — Trustee zones. — Each school-community library district shall be governed by a board of trustees of five (5) members, who at the time of their selection and during their terms of office shall be qualified electors of the district.

(1) Four (4) of the trustees shall be elected. The procedure for nomination and election of trustees shall be as provided for the nomination and election of trustees of a library district pursuant to this chapter. Each school-community public library district may be divided into four (4) trustee zones with each zone having approximately the same population. In order for a school-community public library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and present a description of boundaries of each trustee zone. The board of trustees shall transmit the motion along with the boundaries of the trustee zones to the board or boards of county commissioners in the county or counties where the school-community public library district is contained. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the school-community public library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, the zones shall be deemed to be in full force and effect upon the next annual trustee election. If a school-community public library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the board of trustees in writing if a proposal is rejected.

If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may be redefined and changed, but not more than once every two (2) years, after a new set of trustee zones are formally established and in full force and effect.

All other matters relating to school-community library public district trustee zones shall be as provided in chapters 4 and 5, title 33, Idaho Code, relating to school district trustee zones.

(2) The fifth trustee of the school-community library district board shall be a member of the school district board and shall be appointed by the school district board from its members at the annual meeting of the school district board. In the case of division of the district into four (4) elected school-community public library trustee zones, this fifth trustee shall serve as a trustee member-at-large.

(3) The initial board, except for the fifth trustee who shall be appointed by the school board, shall be appointed by the board of county commissioners, and shall serve until the next annual election of trustees or until their successors are appointed and qualified. [I.C., § 33-2738, as added by 1992, ch. 275, § 2, p. 848; am. 1996, ch. 71, § 31, p. 216.]

33-2739. School-community library districts — Board of trustees — Powers and duties — Fiscal year. — (1) The board of trustees of the school-community library district shall perform the duties required of, and have the power and authority granted to library district trustees pursuant to this chapter, including the authority to levy upon the taxable property in the school-community library district an annual tax not to exceed six hundredths per cent (.06%) of market value for assessment purposes for establishing and maintaining public library services. The school-community library district board shall have exclusive control of the school-community library district fund and shall cause to be made a full and complete audit of the books and accounts of the district as provided for in section 33-2726, Idaho Code.

(2) To bring the fiscal year of school-community library districts into conformity with the fiscal year of library districts, fiscal year 1994 for school-community library districts shall be defined as beginning on July 1, 1993 and ending on September 30, 1994. To fund school-community library district operations from July 1, 1993 through September 30, 1994:

(a) The four (4) existing school-community library districts are authorized to budget for the fifteen (15) month period;

(b) The county commissioners of the relevant counties are authorized to set the levy for the fifteen (15) month period for the four (4) existing school-community library districts;

(c) The state tax commission is authorized to approve the levy for the fifteen (15) month period for the four (4) existing school-community library districts;

(d) The relevant counties are authorized to collect ad valorem taxes for the fifteen (15) month period for the relevant existing school-community library districts within each county's boundaries;

(e) For the fifteen (15) month period only, the maximum allowable levy for school-community library districts shall be seven and one-half hundredths percent (.075%) of market value for assessment purposes.

This subsection (2) shall be void and of no further force and effect on and after September 30, 1994.

(3) On and after fiscal year 1995, school-community library districts shall have a fiscal year of October 1 through September 30. [I.C., § 33-2739, as added by 1992, ch. 275, § 2, p. 848; am. 1993, ch. 316, § 1, p. 1171.]

STATUTORY NOTES

Compiler's Notes. — Note that by its own terms, subsection (2) was no longer in effect, as of September 30, 1994.

Effective Dates. — Section 2 of S.L. 1993, ch. 316 declared an emergency. Approved March 31, 1993.

33-2740. School-community library districts — Consolidation — Reorganization into library districts. — School-community library districts may join existing library districts according to the procedures set forth in section 33-2711, Idaho Code.

School-community library districts may reorganize into a library district as follows. The board of trustees of the school-community library district shall present a resolution calling for reorganization to the board of county commissioners who shall follow the procedures in subsections (2) through (5) of section 33-2704, Idaho Code, except that no precedent petition shall be necessary. After the required hearing, the board of county commissioners shall appoint the first board of library district trustees and thereafter trustees shall be elected as provided in section 33-2715, Idaho Code. The school-community library district's dollar amount of the budget from ad valorem taxes shall be transferred without interruption to the new library district and shall be the base of the ad valorem portion of the new district's budget.

The dispersement of the assets and liabilities of the school-community library district shall be the responsibility of the school-community library district board of trustees should the library consolidate with a library district, organize into a library district, or dissolve. [I.C., § 33-2740, as added by 1992, ch. 275, § 2, p. 848; am. 1996, ch. 71, § 32, p. 216.]

OPINIONS OF ATTORNEY GENERAL

The intent of the Legislature in enacting §§ 33-2737—33-2740 was to provide that the four school-community libraries that existed on June 30, 1992, became school-community library districts with continuous taxing au-

thority on July 1, 1992, and without the need for the patrons of those school districts to determine anew that issue by election. OAG 92-4.

CHAPTER 28

UNIVERSITY OF IDAHO

SECTION.

- 33-2801. University established.
- 33-2802. Board of regents.
- 33-2803. [Repealed.]
- 33-2804. General duties of board.
- 33-2805. Meetings of board — Quorum — Adjournment.
- 33-2806. Powers of board — Sectarian tests prohibited.
- 33-2807. Erection of buildings.
- 33-2808. Duties of treasurer.
- 33-2809. State treasurer as treasurer of regents of university.

SECTION.

- 33-2810. Deposit of moneys of regents of University of Idaho.
- 33-2811. Powers of president and faculty — Courses of study and textbooks — Diplomas — Discipline of students.
- 33-2812. Departments of university.
- 33-2813. College of agriculture.
- 33-2814. Courses.
- 33-2815. Practical prospecting and practical mining — Courses in.
- 33-2816. Women students admitted.
- 33-2817. [Repealed.]

33-2801. University established. — There is hereby established in this state, at the town of Moscow, in the county of Latah, an institution of learning, by the name and style of the University of Idaho. [1888-1889, p. 21, § 1; reen. R.C. & C.L., § 485; C.S., § 1056; I.C.A., § 32-2301.]

STATUTORY NOTES

Cross References. — Location and rights confirmed, Const., Art. IX, § 10.

Supreme Court reports distributed to college of law of University of Idaho and to the

general library of the university, § 1-505.

Tuition at state colleges and universities not required, exceptions, § 33-3717.

JUDICIAL DECISIONS

Cited in: *George v. University of Idaho*, 121 Idaho 30, 822 P.2d 549 (Ct. App. 1991).

33-2802. Board of regents. — The general supervision, government and control of the University of Idaho is vested in the state board of education which also constitutes the board of regents of the university and is known as the state board of education and board of regents of the University of Idaho. [1888-1889, p. 21, § 2; 1901, p. 14, § 1; R.C., § 486; 1913, ch. 77, §§ 1, 3, p. 328; C.L., § 486; C.S., § 1057; I.C.A., § 32-2302; am. 1993, ch. 404, § 4, p. 1470; am. 1999, ch. 56, § 3, p. 143.]

STATUTORY NOTES

Cross References. — State board of education as board of regents of university, § 33-101.

State educational institutions as bodies politic and corporate, § 33-3803.

JUDICIAL DECISIONS

ANALYSIS

Indebtedness.

Constitutionality.

Successors to old board of regents.

Indebtedness.

Board of regents as it existed prior to 1913 had no authority to incur any indebtedness against state, directly or indirectly, in erection of university buildings for which it did not have the funds to pay. *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911).

Constitutionality.

Since Const., Art. IX, § 2 requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho, House Bill 345

(1993, ch. 404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802), which created three boards of education, was unconstitutional. *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993).

Successors to Old Board of Regents.

Session Laws 1913, ch. 77, p. 328, made the state board of education successor of old board of regents of University of Idaho and as such had the power to defend action previously instituted against old board for preexisting obligation. *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

33-2803. Executive committee of board. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1888-1889, p. 21, § 15; reen. R.C.

& C.L., § 487; C.S., § 1058; I.C.A., § 32-2303 was repealed by S.L. 1981, ch. 20, § 1.

33-2804. General duties of board. — The members of the state board of education in the performance of their functions as the board of regents of the university and their successors in office, shall constitute a body corporate, by the name of the regents of the University of Idaho, and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and other property of said university. The board shall elect a president, secretary and treasurer, who shall perform such duties as shall be prescribed by the by-laws of the board. The secretary shall keep a faithful record of all the transactions of the board and of the executive committee thereof. The treasurer shall perform all the duties of such office, subject to such regulations as the board may adopt, and shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. [1888-1889, p. 21, § 3; reen. R.C., § 488; am. by implication 1913, ch. 77, § 3, p. 328; compiled and reen. C.L., § 488; C.S., § 1059; I.C.A., § 32-2304; am. 1971, ch. 136, § 16, p. 522.]

STATUTORY NOTES

Cross References. — Duties of treasurer, § 33-2808.

Powers of boards, § 33-3803.

Regents to have general supervision of university and the control and direction of its

funds, Const., Art. IX, § 10.

Effective Dates. — Section 87 of S.L. 1971, ch. 136 declared an emergency. Approved March 18, 1971.

JUDICIAL DECISIONS

ANALYSIS

Bond issues.

Power to sue and be sued.

Bond Issues.

A statute authorizing the board of regents of the University of Idaho as a corporation to issue bonds to be amortized over a thirty-year period from revenues accruing from project financed by bond proceeds does not violate the constitutional limitations on indebtedness of subdivisions of the state, since the board of regents is not within the scope of the constitutional limitation. *State ex rel. Miller v. State Bd. of Educ.*, 56 Idaho 210, 52 P.2d 141 (1935).

Power to Sue and Be Sued.

Board of regents as it existed prior to 1913 was a body corporate and had implied power to sue and be sued. Action against them was not, in effect, an action against state. *American Bonding Co. v. Regents of Univ. of Idaho*, 11 Idaho 163, 81 P. 604 (1905); *Phoenix Lumber Co. v. Regents of Univ. of Idaho*, 197 F. 425 (C.C.D. Idaho 1908), overruled on other grounds, *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988); *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911); *Interstate Constr. Co. v. Regents of*

Univ. of Idaho, 199 F. 509 (D. Idaho 1912), overruled on other grounds, *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988); *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

Session Laws 1913, ch. 77, p. 328, made the state board of education the successor of the old board of regents of the University of Idaho and, whether or not an action could be maintained against such new board, the new board could, nevertheless, defend an action which had previously been instituted against the old board of regents. *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

The state board of education acting as the board of regents of the University of Idaho is a constitutional corporation with granted powers and, while functioning within scope of its authority, is not subject to control or supervision of any other branch, board, or department of the state government, but is a separate entity, and may sue and be sued, with power to contract and discharge indebtedness, with right to exercise its discretion within the powers granted, without authority to contract indebtedness against the state,

and in no sense is a claim against the regents one against the state. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

33-2805. Meetings of board — Quorum — Adjournment. — The time of the election of the president, secretary and treasurer of said board, and the duration of their respective terms of office and the time for holding such meetings as may be required, and the manner of notifying the same, shall be determined by the by-laws of the board. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. [1888-1889, p. 21, § 4; reen. R.C., § 489; modified by 1913, ch. 77, § 5, p. 330; compiled and reen. C.L., § 489; C.S., § 1060; I.C.A., § 32-2305.]

33-2806. Powers of board — Sectarian tests prohibited. — The board of regents shall enact laws for the government of the university in all its branches, elect a president and the requisite number of professors, instructors, officers and employees, and fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction either sectarian in religion or partisan in politics shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of regents or in the election of professors, teachers, or other officers of the university, or in the admission of students thereto, or for any purpose whatever. The board of regents shall have power to remove the president or any professor, instructor or officer of the university, when, in their judgment, the interests of the university require it. The board may prescribe rules and regulations for the management of the libraries, cabinets, museum, laboratories and all other property of the university and of its several departments, and for the care and preservation thereof, with penalties and forfeitures, by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction of such action. [1888-1889, p. 21, § 5; reen. R.C. & C.L., § 490; C.S., § 1061; I.C.A., § 32-2306.]

STATUTORY NOTES

Cross References. — Dormitory fund, § 33-3702.

Gifts, legacies and devises for state educational institutions, § 33-3714.

Power of board to sue and be sued, § 33-2804.

Religious tests, qualifications, and teachings prohibited, Const., Art. IX, § 6.

JUDICIAL DECISIONS

Statute Read Into Contract.

Provision empowering board to remove a professor is part of the contract between pro-

fessor and board. *Hyslop v. Regents of Univ.*, 23 Idaho 341, 129 P. 1073 (1913).

RESEARCH REFERENCES

A.L.R. — Elements and measure of damages in action by schoolteacher for wrongful

discharge, 22 A.L.R.3d 1047.

Sexual conduct as ground for dismissal of

teacher or denial or revocation of teaching certificate. 78 A.L.R.3d 19.

33-2807. Erection of buildings. — The board of regents are authorized to expend such portion of the income of the university fund as they may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto. [R.C., § 491; reen. C.L., § 491; C.S., § 1062; I.C.A., § 32-2307.]

STATUTORY NOTES

Cross References. — Bonds, issuance under Educational Institutions Act of 1935, § 33-3801 et seq.

Contract for housing facilities at state institutions, § 33-3701.

Permanent building fund, § 57-1101 et seq.

University earnings reserve fund, § 33-2909A.

University income fund, § 33-2910.

University permanent endowment fund, § 33-2909.

JUDICIAL DECISIONS

ANALYSIS

Liability of board on contracts.

Limitations on expenditures.

Liability of Board on Contracts.

Board may enter into a contract for erection of buildings for said university, and, if it fails to comply with contract, action may be maintained in district court against it to compel it to do so. *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911).

Limitations on Expenditures.

Under this section, board is not authorized to expend any portion of university funds that

have been raised or appropriated for other purposes for erection of buildings. *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911).

Board has no authority to incur any indebtedness in erection of university buildings for which it has not the funds to pay. *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911).

33-2808. Duties of treasurer. — The treasurer of said board shall, out of any moneys in his hands belonging to said board, pay all orders drawn upon him by the president and secretary thereof, when accompanied by vouchers fully explaining the character of the expenditure, and the books and accounts of the treasurer shall at all times be opened to the inspection of the board. The treasurer shall make an annual report to the president of the board of all transactions connected with the duties of his office. [1888-1889, p. 21, § 17; reen. R.C. & C.L., § 492; C.S., § 1063; I.C.A., § 32-2308.]

STATUTORY NOTES

Cross References. — Bursar at state educational institutions, § 33-3712.

General duties of treasurer, § 33-2804.

33-2809. State treasurer as treasurer of regents of university. — In the event the state board of education, acting as the regents of the University of Idaho, shall elect the state treasurer as the treasurer of the

regents of the university, the said state treasurer is hereby empowered and directed to act as the treasurer of the regents of the University of Idaho and as such officer of the regents of the university he shall receive and deposit all funds received by him in such general or special fund that the regents may find necessary and expedient to create for the lawful management of the finances of the University of Idaho and shall disburse all funds deposited with him as provided for in section 33-2808. [1927, ch. 100, § 1, p. 130; I.C.A., § 32-2309.]

STATUTORY NOTES

Cross References. — State auditor authorized to keep records of general and special funds created by board of regents, § 67-1031. University fund, §§ 33-2909 and 33-2910.

33-2810. Deposit of moneys of regents of University of Idaho. — The state treasurer shall deposit and at all times keep on deposit, subject to the provisions of chapter 27 of title 67, being the State Depository Law, and subsequent amendments thereof, all moneys deposited with him as treasurer of the regents of the University of Idaho in the event he shall be elected as such treasurer by such board: provided, however, that the moneys belonging to regents of the University of Idaho shall be so deposited and accounted for that any and all interest accruing for and on account thereof shall be accredited to any general or special fund of the regents of the University of Idaho. [1927, ch. 79, § 1, p. 98; I.C.A., § 32-2310.]

STATUTORY NOTES

Compiler's Notes. — As originally enacted, this section contained a reference to "Chapter 17 of Title 2 of Part 1 of the Idaho Compiled Statutes, being the State Depository Law." In Idaho Code Annotated, this was changed to read "Chapter 26 of title 65." These provisions are compiled as chapter 27 of title 67 and the text reference has been changed to correspond.

33-2811. Powers of president and faculty — Courses of study and textbooks — Diplomas — Discipline of students. — The president of the university shall be president of the faculty, or of the several faculties as they may be hereafter established, and the executive head of the instructional force in all its departments. As such, he shall have authority, subject to the board of regents, to give general direction to the instruction and scientific investigation of the university, and so long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. The immediate government of the university shall be intrusted to the faculty, but the regents shall have the power to regulate courses of instruction, and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other cause prescribed by such by-laws. [1888-1889, p. 21, § 8; reen. R.C. & C.L., § 495; C.S., § 1064; I.C.A., § 32-2311.]

RESEARCH REFERENCES

A.L.R. — Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 A.L.R.3d 864.

33-2812. Departments of university. — The object of the University of Idaho shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with the scientific, industrial and professional pursuits, and to this end it shall consist of the following colleges or departments, to wit:

1. The college or department of arts.
2. The college or department of letters.
3. The professional or other colleges or departments, as may from time to time be added thereto or connected therewith. [1888-1889, p. 21, § 9; reen. R.C. & C.L., § 496; C.S., § 1065; I.C.A., § 32-2312.]

33-2813. College of agriculture. — The action of the regents of the University of Idaho, in establishing and maintaining a college of agriculture in connection with the university at Moscow, and in accordance with an act of Congress, approved July 2, 1862, and known as the land grant act, as supplemented by an act of Congress for the more complete endowment and support of colleges of agriculture and mechanic arts, approved August 30, 1890, is a proper exercise of the lawful powers of the regents as set forth in the act creating the university, and the clauses of the state constitution confirming the same. And the said action of the regents in establishing and maintaining the said college of agriculture in accordance with said laws, is hereby expressly approved and confirmed. [1909, p. 38; reen. C.L., § 496a; C.S., § 1066; I.C.A., § 32-2313.]

STATUTORY NOTES

Cross References. — Agricultural college earning reserve fund, § 33-2913A.

Agricultural college permanent endowment fund, § 33-2913.

Rights of university confirmed, Const., Art. IX, § 10.

Scientific school permanent endowment fund, § 33-2911.

Federal References. — The act of Con-

gress approved July 2, 1862, and known as the land grant act, referred to in the first sentence of this section, is compiled as 7 U.S.C. §§ 301-305, 307, 308.

The act of Congress approved August 30, 1890, referred to in the first sentence of this section, is compiled as 7 U.S.C. §§ 321-326, 328.

JUDICIAL DECISIONS

Federal Funds.

Congressional appropriation for college of agriculture should not be placed in general

fund of state. *Melgard v. Eagleson*, 31 Idaho 411, 172 P. 655 (1918).

33-2814. Courses. — Subject to the authority of the regents to prescribe programs and courses of study, the college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures [manufac-

turing], architecture and commerce, and such branches included in the college of letters as shall be necessary to a proper fitness of the pupils in the scientific and practical courses for their chosen pursuits; and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be coexistent with the college of arts and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the college of arts as the regents of the university shall prescribe. [1888-1889, p. 21, § 10; reen. R.C. & C.L., § 497; C.S., § 1067; I.C.A., § 32-2314; am. 1983, ch. 155, § 3, p. 431.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "manufacturing", in the first sentence, was inserted by the compiler.

33-2815. Practical prospecting and practical mining — Courses in. — The board of regents of the University of Idaho, and of the Idaho bureau of mines and geology [geological survey] may prescribe a special course of instructions in practical prospecting, including a short course in practical mining including identification and classification of minerals at the University of Idaho, or in a mobile unit of the school of mines, which shall be open to special students desirous of studying such subjects, but who may be ineligible for admission to enter the University of Idaho on account of having deficient entrance credits. [1945, ch. 136, § 1, p. 206.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion was made by the compiler to reflect the change of the Idaho bureau of mines and geology to the Idaho geological survey by S.L. 1984, ch. 101.

33-2816. Women students admitted. — The university shall be open to female as well as male students, under such regulations and restrictions as the board of regents may deem proper. [1888-1889, p. 21, § 11; reen. R.C. & C.L., § 498; C.S., § 1068; I.C.A., § 32-2315.]

33-2817. Tuition not required — Exceptions. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1888-1889, § 12, p. 21; reen. R.C. & C.L., § 499; C.S., § 1069; I.C.A., § 32-2316, was repealed by S.L. 1970, ch. 226, § 2. For present law see § 33-3717.

CHAPTER 29

UNIVERSITY OF IDAHO — FEDERAL EDUCATIONAL AID

SECTION.

- 33-2901. Assent to Morrill acts.
- 33-2902. Assent to Hatch act.
- 33-2903. Assent to Adams act.
- 33-2904. Assent to Smith-Lever act.
- 33-2905. Assent to Purnell act — Agricultural experimentation.
- 33-2906. Purnell act — Receipt and expenditure of appropriations.
- 33-2907. Purnell act — Continuing appropriation of moneys received.
- 33-2908. Assent to act of May 22, 1928 — Agricultural extension work.
- 33-2909. University permanent endowment fund.

SECTION.

- 33-2909A. University earnings reserve fund.
- 33-2910. University income fund.
- 33-2911. Scientific school permanent endowment fund.
- 33-2911A. Scientific school earnings reserve fund.
- 33-2912. Scientific school income fund.
- 33-2913. Agricultural college permanent endowment fund.
- 33-2913A. Agricultural college earnings reserve fund.
- 33-2914. Agricultural college income fund.

33-2901. Assent to Morrill acts. — The assent of the legislature of the state of Idaho is hereby given to all the provisions of an act of Congress, approved July 2, 1862, entitled, "An act donating public lands to the several states which may provide colleges for the benefit of agriculture and the mechanic arts," and the acts amendatory thereof and supplementary thereto. [1890-1891, p. 16, § 1, first part; reen. 1899, p. 9, § 1, first part; reen. R.C., § 29, first part; reen. C.L. 40:1; C.S., § 1070; I.C.A., § 32-2401.]

STATUTORY NOTES

Federal References. — The act of Congress, approved July 2, 1862, popularly known as the Morrill act, and the acts amendatory thereof, are compiled as 7 U.S.C.S. § 301 et seq.

33-2902. Assent to Hatch act. — The assent of the legislature of the state of Idaho is hereby given to all the provisions of an act of Congress, approved March 2, 1887, entitled, "An act to establish agricultural experimental stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and the acts supplemental thereto," and the acts amendatory thereof and supplementary thereto. [1890-1891, p. 16, § 1; reen. 1899, p. 9, § 1; reen. R.C., § 29, second part; compiled and reen. C.L. 40:2; C.S., § 1071; I.C.A., § 32-2402.]

STATUTORY NOTES

Federal References. — The act of Congress, approved March 2, 1887, known as the Hatch act of 1887, as amended, is compiled as 7 U.S.C.S. § 361a et seq.

33-2903. Assent to Adams act. — The assent of the legislature of the state of Idaho shall be, and the same is hereby, given to all the provisions of an act of Congress, approved March 16, 1906, entitled, "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditures thereof." And the legislature of the state of Idaho hereby approves of, and assents to, the purposes of the grants and

appropriations provided for and made by said act of Congress, and hereby agrees to abide by the terms, conditions, requirements and limitations thereof. [1907, p. 22, § 1; reen. R.C., § 30; compiled and reen. C.L. 40:3; C.S., § 1072; I.C.A., § 32-2403.]

STATUTORY NOTES

Federal References. — The act of Congress, approved March 16, 1906, known as the Adams act of 1906, was repealed by Act Aug. 11, 1955, ch. 790, § 2. The present federal

statutes concerning agricultural experimental stations are compiled at 7 U.S.C.S. § 361a et seq.

33-2904. Assent to Smith-Lever act. — The assent of the legislature of the state of Idaho is given to the provisions and requirements of an act of Congress, approved May 8, 1914, entitled, "An act to provide for the cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of Congress approved July 2, 1863, and of acts supplementary thereto, and the United States department of agriculture." The state board of education and board of regents of the University of Idaho are authorized and empowered to receive the grants of money appropriated under such act, and to organize and conduct agricultural extension work which shall be carried on in connection with the terms and conditions expressed in the act of Congress aforesaid; and the treasurer of the state board of education and board of regents of the University of Idaho is hereby designated as the officer to whom all moneys granted to the state of Idaho under said act shall be paid. [1915, p. 397; 1917, ch. 157, p. 483; compiled and reen. C.L. 40:4; C.S., § 1073; I.C.A., § 32-2404.]

STATUTORY NOTES

Federal References. — The act of Congress, approved May 8, 1914, known as the

Smith-Lever act, is compiled as 7 U.S.C.S. § 341 et seq.

33-2905. Assent to Purnell act — Agricultural experimentation. — The assent of the legislature of the state of Idaho is hereby given to all provisions and requirements of an act of Congress approved February 24, 1925, commonly known as "The Purnell Act" and entitled "An act to authorize more complete endowment of agricultural experimentation and for other purposes," and the acts amendatory thereof and supplementary thereto. [1927, ch. 22, § 1, p. 27; I.C.A., § 32-2405.]

STATUTORY NOTES

Federal References. — The Purnell Act of 1925, approved February 24, 1925, referred to in this section, was repealed by act Aug. 11, 1955, ch. 790, § 2. The present federal stat-

utes concerning agricultural experimental stations are compiled at 7 U.S.C.S. § 361a et seq.

33-2906. Purnell act — Receipt and expenditure of appropriations. — The regents of the University of Idaho are authorized and

empowered to receive any grants of money appropriated under such act and to expend the same in accordance with the terms, conditions, requirements, and limitations of said act, and the treasurer of the regents of the university is hereby designated as the officer to whom all moneys granted to the state of Idaho under said act shall be paid. [1927, ch. 22, § 2, p. 27; I.C.A., § 32-2406.]

STATUTORY NOTES

Federal References. — The references to “such act” and “said act” in this section are to the Purnell Act of 1925. See Federal References, § 33-2905.

33-2907. Purnell act — Continuing appropriation of moneys received. — All moneys accruing or accrediting to, and which may be received for and on account of said act are hereby perpetually appropriated and set apart for the support and maintenance of the work contemplated in the aforementioned act of Congress. [1927, ch. 22, § 3, p. 27; I.C.A., § 32-2407.]

STATUTORY NOTES

Federal References. — The references to “said act” and “aforementioned act” in this section are to the Purnell Act of 1925. See Federal References, § 33-2905.

33-2908. Assent to act of May 22, 1928 — Agricultural extension work. — The state of Idaho hereby assents to the provisions and requirements of an act of Congress approved May 22, 1928, entitled “An act to provide for the further development of agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act entitled ‘An act donating public lands of the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts’ approved July 2, 1862, and all acts supplementary thereto, and the United States Department of Agriculture”; and hereby authorizes the state board of education and board of regents of the University of Idaho to receive the grants of money appropriated under said act and to organize and conduct agricultural extension work which shall be carried on in connection with the college of agriculture of the state university in accordance with the terms and conditions expressed in the said act of Congress. [1929, ch. 269, § 1, p. 27; I.C.A., § 32-2408.]

STATUTORY NOTES

Cross References. — Agricultural and home economics demonstration work, county commissioners may provide funds, § 31-839.

Federal References. — The act of Congress, approved May 22, 1928, was repealed by Act June 26, 1953, ch. 157, § 2.

33-2909. University permanent endowment fund. — (1) There is established in the state treasury the university permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the

state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

(a) Proceeds from the sale of any lands granted to the state of Idaho by the United States government for university purposes under the provisions of the act of congress of February 18, 1881, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," as amended by the Idaho Admission Bill 26 Stat. L. 215, ch. 656, and lands granted in lieu of university lands;

(b) Proceeds of royalties arising from the extraction of minerals on university endowment lands owned by the state;

(c) Moneys allocated from the university earnings reserve fund.

(2) Proceeds from the sale of university endowment lands may be first deposited into the land bank fund established in section 58-133, Idaho Code, for the benefit of endowment beneficiaries. If the proceeds from the sale of land are not used to acquire other lands in accordance with section 58-133, Idaho Code, the land sale proceeds shall be deposited into the university permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the university permanent endowment fund shall be distributed according to the provisions of section 57-723A, Idaho Code. [I.C., § 33-2909, as added by 1998, ch. 256, § 11, p. 825.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

State board of land commissioners, Art. IX, § 7, Idaho Const., and § 58-101.

University earnings reserve fund, § 33-2909.

Prior Laws. — Former § 33-2909, which comprised 1905, p. 417, §§ 1, 2; R.C., § 17, subd. 74; reen. C.L. 40:6; C.S., § 1074; I.C.A., § 32-2409; am. 1994, ch. 180, § 48, p. 420, was repealed by S.L. 1998, ch. 256, § 10, effective July 1, 2000.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, added and repealed this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state

board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2909A. University earnings reserve fund. — (1) There is established in the state treasury the university earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

(a) All earnings from the university permanent endowment fund;

(b) Proceeds of the sale of timber growing upon university endowment lands;

(c) Proceeds of leases of university endowment lands;

(d) Proceeds of interest charged upon deferred payments on university endowment lands or on timber on those lands; and

(e) All other proceeds received from the use of university endowment lands and not otherwise designated for deposit in the university permanent endowment fund.

(2) Moneys shall be distributed out of the university earnings reserve fund only to support the beneficiaries of the university endowment, including distributions by the state board of land commissioners to the university permanent endowment fund and the university income fund; provided, that funds shall not be appropriated by the legislature from the university earnings reserve fund except to pay for administrative costs incurred managing the assets of the university endowment including, but not limited to, real property and monetary assets. [I.C., § 33-2909A, as added by 1998, ch. 256, § 12, p. 825.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

University earnings reserve fund, § 33-2909.

University income fund, § 33-2910.

University permanent endowment fund, § 33-2909.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the

general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2910. University income fund. — There is established in the state treasury the university income fund. The fund shall consist of all moneys distributed from the university earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the university income fund shall be used for the benefit of beneficiaries of the university endowment and distributed to current beneficiaries of the endowment pursuant to legislative appropriation. [I.C., § 33-2910, as added by 1998, ch. 256, § 14, p. 825.]

STATUTORY NOTES

Cross References. — University earnings reserve fund, § 33-2909.

Prior Laws. — Former § 33-2910, which comprised 1905, p. 417, § 4; R.C., § 17, subd.

74; compiled and reen. C.L. 40:7; C.S., § 1075; I.C.A., § 32-2410, was repealed by S.L. 1998, ch. 256, § 13, effective July 1, 2000.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, added and repealed this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2911. Scientific school permanent endowment fund. —

(1) There is established in the state treasury the scientific school permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

(a) Proceeds of the sale of lands granted to the state of Idaho by the United States government under the provisions of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, known as scientific school endowment lands, and those granted in lieu of such lands;

(b) Proceeds of royalties arising from the extraction of minerals on scientific school endowment lands owned by the state;

(c) Moneys allocated from the scientific school earnings reserve fund.

(2) Proceeds from the sale of scientific school endowment lands may be first deposited into the land bank fund established in section 58-133, Idaho Code, to be used to acquire other lands within the state for the benefit of beneficiaries of the scientific school endowment. If the land sale proceeds are not used to acquire other lands in accordance with section 58-133, Idaho Code, the proceeds shall be deposited into the scientific school permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the scientific school permanent endowment fund shall be distributed according to the provisions of section 57-723A, Idaho Code. [I.C., § 33-2911, as added by 1998, ch. 256, § 16, p. 825.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

State board of land commissioners, Art. IX, § 7, Idaho Const., and § 58-101.

Prior Laws. — Former § 33-2911, which comprised 1905, p. 418, § 1; continued in force R.C., § 17, subd. 75; reen. C.L. 40:8; C.S., § 1076; I.C.A., § 32-2411; am. 1994, ch. 180, § 49, p. 420, was repealed by S.L. 1998, ch. 256, § 15, effective July 1, 2000.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of

Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the

events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2911A. Scientific school earnings reserve fund. — (1) There is established in the state treasury the scientific school earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

- (a) All earnings of the scientific school permanent endowment fund;
- (b) Proceeds of the sale of timber on scientific school endowment lands;
- (c) Proceeds of leases of scientific school lands;
- (d) Proceeds of interest charged upon deferred payments on scientific school endowment lands or on timber on those lands; and
- (e) All other proceeds received from the use of scientific school endowment lands and not otherwise designated for deposit in the scientific school permanent endowment fund.

(2) Moneys shall be distributed out of the scientific school earnings reserve fund only to support the beneficiaries of the scientific school endowment, including distributions by the state board of land commissioners to the scientific school permanent endowment fund and the scientific school income fund; provided, that funds shall not be appropriated by the legislature from the scientific school earnings reserve fund except to pay for administrative costs incurred managing the assets of the scientific school endowment including, but not limited to, real property and monetary assets. [I.C., § 33-2911A, as added by 1998, ch. 256, § 17, p. 825.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

Scientific school permanent endowment fund, § 33-2911.

State board of land commissioners, Art. IX, § 7, Idaho Const., and § 58-101.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds re-

lated to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2912. Scientific school income fund. — There is established in the state treasury the scientific school income fund. The fund shall consist of all moneys distributed from the scientific school earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the scientific school income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the scientific school endowment pursuant to legislative appropriation. [I.C., § 33-2912, as added by 1998, ch. 256, § 19, p. 825.]

STATUTORY NOTES

Cross References. — Scientific school earnings reserve fund, § 33-2912.

Prior Laws. — Former § 33-2912, which comprised 1905, p. 418, § 2; 1907, p. 26, § 1; continued in force R.C., § 17, subd. 81; compiled and reen. C.L. 40:9; C.S., § 1077; I.C.A., § 32-2412, was repealed by S.L. 1998, ch. 256, § 18, effective July 1, 2000.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of

Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2913. Agricultural college permanent endowment fund. — (1) There is established in the state treasury the agricultural college permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

- (a) Proceeds of the sale of agricultural college endowment lands granted to the state of Idaho by the United States government under the provisions of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656;
- (b) Proceeds of royalties arising from the extraction of minerals on agricultural college endowment lands owned by the state;
- (c) Moneys allocated from the agricultural college earnings reserve fund.

(2) Proceeds from the sale of agricultural college endowment lands may be first deposited into the land bank fund established in section 58-133, Idaho Code, to be used to acquire other lands within the state for the benefit of beneficiaries of the agricultural college endowment. If the land sale proceeds are not used to acquire other lands in accordance with section 58-133, Idaho Code, the proceeds shall be deposited into the agricultural college permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the agricultural college permanent endowment fund shall be distributed according to the provisions of section 57-723A, Idaho Code. [I.C., § 33-2913, as added by 1998, ch. 256, § 21, p. 825.]

STATUTORY NOTES

Cross References. — Agricultural college earnings reserve fund, § 33-2913A.

Endowment fund investment board, § 57-718.

State board of land commissioners, art. IX, § 7, Idaho Const., and § 58-101.

Prior Laws. — Former § 33-2913, which comprised 1905, p. 419; R.C., § 17, subd. 76; am. 1911, ch. 26, §§ 1, 2, p. 62; reen. C.L. 40:10; C.S., § 1078; I.C.A., § 32-2413; am. 1994, ch. 180, § 50, p. 420, was repealed by S.L. 1998, ch. 256, § 20, effective July 1, 2000.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that

amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2913A. Agricultural college earnings reserve fund. —

(1) There is established in the state treasury the agricultural college earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following: *

- (a) All earnings of the agricultural college permanent endowment fund;
- (b) Proceeds of the sale of timber growing on agricultural college endowment lands;
- (c) Proceeds of leases of agricultural college endowment lands;
- (d) Proceeds of interest charged upon deferred payments on agricultural college endowment lands or on timber on those lands; and
- (e) All other proceeds received from the use of agricultural college endowment lands and not otherwise designated for deposit in the agricultural college permanent endowment fund.

(2) Moneys shall be distributed out of the agricultural college earnings reserve fund only to support the beneficiaries of the agricultural college endowment, including distributions by the state board of land commissioners to the agricultural college permanent endowment fund and the agricultural college income fund; provided, that funds shall not be appropriated by the legislature from the agricultural college earnings reserve fund except to pay for administrative costs incurred managing the assets of the agricultural college endowment including, but not limited to, real property and monetary assets. [I.C., § 33-2913A, as added by 1998, ch. 256, § 22, p. 825.]

STATUTORY NOTES

Cross References. — Agricultural college income fund, § 33-2914.

Agricultural college permanent endowment fund, § 33-2913A.

Endowment fund investment board, § 57-718.

State board of land commissioners, art. IX, § 7, Idaho Const., and § 58-101.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the

general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-2914. Agricultural college income fund. — There is established in the state treasury the agricultural college income fund. The fund shall consist of all moneys distributed from the agricultural college earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the agricultural college income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the agricultural college endowment pursuant to legislative appropriation. [I.C., § 33-2914, as added by 1998, ch. 256, § 24, p. 825.]

STATUTORY NOTES

Cross References. — Agricultural college earnings reserve fund, § 33-2913A.

Prior Laws. — Former § 33-2914, which comprised 1911, ch. 26, §§ 3, 4, p. 63; compiled and reen. C.L. 40:11; C.S., § 1079; I.C.A., § 32-2414, was repealed by S.L. 1998, ch. 256, § 23, effective July 1, 2000.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, added and repealed this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have

been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

CHAPTER 30

IDAHO STATE UNIVERSITY

SECTION.

33-3001. Establishment of Idaho State University.

SECTION.

33-3002. Purposes of Idaho State University.

SECTION.

- 33-3003. Body politic and corporate — Board of trustees.
 33-3004. Organization, meetings and proceedings of board.
 33-3005. Title to property — Acquiring, selling or exchanging property.
 33-3006. General powers of board of trustees.
 33-3007. [Repealed.]

SECTION.

- 33-3008. Board may maintain training school.
 33-3009. Sectarian tests prohibited.
 33-3010. Funds, property and obligations transferred.
 33-3011. Existing statutes to be construed.
 33-3012. State museum of natural history.

33-3001. Establishment of Idaho State University. — There is hereby established in the city of Pocatello, Idaho, an institution of higher education to be designated and known as the Idaho State University, consisting of such colleges, schools or departments as may from time to time be authorized by the state board of education. [1963, ch. 12, § 1, p. 23.]

STATUTORY NOTES

Cross References. — State board of education to have supervision, § 33-101.

Tuition at state colleges and universities not required, exceptions, § 33-3717.

Compiler's Notes. — For the history con-

cerning the establishment of Idaho State University see the Laws of 1901, p. 17; S.L. 1915, ch. 29; S.L. 1927, ch. 21; S.L. 1943, ch. 127; S.L. 1945, ch. 173; S.L. 1947, ch. 107; S.L. 1955, ch. 26.

33-3002. Purposes of Idaho State University. — Idaho State University shall be a comprehensive institution of higher education giving instruction in undergraduate, professional and graduate education, as approved by the board of trustees.

Courses of instruction in the college of pharmacy shall be such as shall meet the standard requirements as are now, or hereafter may be, recommended by the recognized accrediting agency for schools or colleges of pharmacy, and the usual degrees shall be granted for completion of courses in pharmacy.

The board of trustees may establish professional-technical and other courses or programs, as it may deem necessary, and such courses or programs may be given or conducted on or off campus, or in night schools, summer schools, or by extension courses. [1963, ch. 12, § 2, p. 23; am. 1965, ch. 182, § 1, p. 380; am. 1983, ch. 155, § 4, p. 431; am. 1996, ch. 269, § 1, p. 872; am. 1999, ch. 329, § 33, p. 852.]

33-3003. Body politic and corporate — Board of trustees. — The Idaho State University is hereby declared to be a body politic and corporate, with its own seal and having power to sue and be sued in its own name. The general supervision, government and control of the Idaho State University is vested in the state board of education, which shall act as the board of trustees of the Idaho State University. [1963, ch. 12, § 3, p. 23.]

STATUTORY NOTES

Cross References. — State board of education, § 33-101.

JUDICIAL DECISIONS

ANALYSIS

Immunity from suit.
Insurance policies.

Immunity from Suit.

The state did not waive its Eleventh Amendment immunity as to Idaho State University by this section and § 33-3803. *Ferguson v. Greater Pocatello Chamber of Commerce, Inc.*, 647 F. Supp. 190 (D. Idaho 1985), *aff'd*, 848 F.2d 976 (9th Cir. 1988).

Insurance Policies.

Idaho State University (ISU) was the sole insured party under disputed insurance pol-

icy; neither the state of Idaho nor the bureau of risk management were named insureds in the policy and they were not the same legal entity as ISU which enjoys its own independent legal status. *State v. Continental Cas. Co.*, 121 Idaho 938, 829 P.2d 528 (1992).

Cited in: *State & Idaho State Univ. v. Continental Cas. Co.*, 126 Idaho 178, 879 P.2d 1111 (1994).

RESEARCH REFERENCES

A.L.R. — Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 A.L.R.3d 703.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training. 35 A.L.R.3d 758.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 36 A.L.R.3d 361.

Tort liability of public schools and institutions of higher learning for injuries caused by

acts of fellow students. 36 A.L.R.3d 480.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 A.L.R.3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 23 A.L.R.5th 1.

33-3004. Organization, meetings and proceedings of board. — The board of trustees, at its first meeting and annually thereafter, shall organize by electing a chairman, a vice-chairman and a secretary. A majority of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. No member of the board shall participate in any proceeding in which he has a pecuniary interest. No vacancy on the board shall impair the right of the remaining trustees to exercise all the powers of the board. Every vote and official act shall be entered of record. The state treasurer shall serve as treasurer of the board. It shall be the duty of the secretary to keep an accurate and detailed account of the doings of the board. [1963, ch. 12, § 4, p. 23.]

STATUTORY NOTES

Cross References. — Meetings of state board of education, § 33-104.

33-3005. Title to property — Acquiring, selling or exchanging property. — All rights and title to property, real or personal, belonging to or vested in the Idaho State University are hereby vested in its board of trustees and their successors. The board of trustees is empowered to

acquire, by purchase or exchange, any property which in the judgment of the board is needful for the operation of the Idaho State University, and to dispose of, by sale or exchange, any property which in the judgment of the board is not needful for the operation of the said university. [1963, ch. 12, § 5, p. 23.]

33-3006. General powers of board of trustees. — The board of trustees of the Idaho State University shall have the following powers:

1. To adopt rules and regulations for its own government and for that of the university.

2. To employ a president of the university and, with his advice, to appoint such assistants, deans, instructors, specialists and other employees as are required for the operation of the university; to fix salaries and prescribe duties; and to remove the president or other employees in accordance with the policies and rules of the state board of education.

3. With the advice of the president, to prescribe the courses and programs of study, the requirements for admission, the time and standard for graduation, and to grant academic degrees to those students entitled thereto.

4. To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the grantor.

5. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program, to accept grants or gifts from any source for the conduct of such program; and to conduct such program on or off campus.

6. To employ architects or engineers in planning the construction, remodeling or repair of any building or property and, whenever no other agency is designated by law so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof.

7. To have at all times, general supervision and control of all property, real and personal, appertaining to the university, and to insure the same. [1963, ch. 12, § 6, p. 23; am. 2005, ch. 65, § 2, p. 228.]

STATUTORY NOTES

Cross References. — Bonds, issuance under Educational Institutions Act of 1935, § 33-3801 et seq.

Contracts for housing facilities at state institutions, § 33-3701.

Permanent building fund, § 57-1101 et seq.

33-3007. Tuition not required — Exceptions. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1963, ch. 12, § 7, p. 23, was

repealed by S.L. 1970, ch. 226, § 2. For present law, see § 33-3717.

33-3008. Board may maintain training school. — The board of trustees may establish and maintain a training or model school, in which students in the college of education in the university shall be required to

instruct classes under the supervision and direction of experienced teachers. [1963, ch. 12, § 8, p. 23.]

33-3009. Sectarian tests prohibited. — No religious or sectarian test shall be applied in the admission of students, nor in the selection of instructors or other personnel of the university. [1963, ch. 12, § 9, p. 23.]

STATUTORY NOTES

Cross References. — Religious tests, qualifications, and teachings prohibited, Const., Art. IX, § 6.

33-3010. Funds, property and obligations transferred. — All of the funds and moneys in the dormitory fund and dining hall fund, including any revolving fund, of the Idaho State College, as the same are authorized by sections 33-3701 — 33-3711, and all of the unexpended funds heretofore allocated and appropriated to the Idaho State College for the purposes specified therein, and all of the educational, charitable endowment or other endowment funds, holdings, rights, privileges and immunities of the Academy of Idaho, the Idaho Technical Institute, the Southern Branch of the University of Idaho, and the Idaho State College, including the institutions' endowment funds referred to in sections 66-1103 — 66-1107, and any allocations or appropriations from the normal school fund for the use of the department of education at the Idaho State College, are hereby transferred to, vested in and continued in the Idaho State University and placed under the control of its board of trustees, and appropriated for expenditure by it and shall be paid out by the state treasurer in the manner provided by the constitution and laws of the state of Idaho. All of the property, real and personal, and all of the obligations, legal or moral, of the Idaho State College, are hereby vested in, or shall become the obligations of, the Idaho State University. [1963, ch. 12, § 10, p. 23.]

STATUTORY NOTES

Cross References. — Bursar at state educational institutions, §§ 33-3712 and 33-3713.

Dining halls at state educational institu-

tions, § 33-3704 et seq.

Dormitory fund, § 33-3702.

Gifts, legacies and devises for state educational institutions, § 33-3714.

33-3011. Existing statutes to be construed. — Wherever the name Academy of Idaho, Idaho Technical Institute, Southern Branch of the University of Idaho, or Idaho State College, shall appear in any statute, such statute hereby is amended to read Idaho State University as fully and completely as though the said name on said statute was specifically amended herein, and all such statutes shall be construed to refer to and mean the Idaho State University. [1963, ch. 12, § 11, p. 23.]

STATUTORY NOTES

Effective Dates. — Section 13 of S.L. 1963, ch. 12, provided that the act should take effect on and after July 1, 1963.

33-3012. State museum of natural history. — (1) Recognizing the importance of our natural heritage to the citizens of the state of Idaho, and the need for a state museum of natural history which would preserve and interpret natural history objects and which would provide educational services about our natural heritage for both residents and visitors through its own facilities and by supporting and encouraging local and municipal natural history museums throughout the state of Idaho, there is hereby created and established at Idaho State University a state museum of natural history to be known as the Idaho museum of natural history, where tangible objects and documents reflecting our natural heritage may be collected, preserved, studied, interpreted, and displayed for educational and cultural purposes.

(2) The Idaho museum of natural history may receive gifts, contributions, and donations of all kinds for the purpose of support and maintenance of the museum, and may receive tangible objects and specimens for the development of collections, educational programs and exhibits. [I.C., § 33-3012, as added by 1986, ch. 239, § 1, p. 651.]

CHAPTER 31

LEWIS-CLARK STATE COLLEGE

SECTION.

- 33-3101. Establishment of school.
- 33-3102. Board of trustees.
- 33-3103. Meetings, officers, and proceedings of board.
- 33-3104. General powers and duties of board.
- 33-3105. [Repealed.]
- 33-3106. President and other teachers, officers, and employees — Salaries and duties — Removal.
- 33-3107. Course of study, certificates, and diplomas.

SECTION.

- 33-3108 — 33-3112. [Repealed.]
- 33-3113. Sectarian tests prohibited.
- 33-3114. Transfer and control of funds.
- 33-3115. [Repealed.]
- 33-3116. Construction of references to Lewiston State Normal School.
- 33-3117, 33-3118. [Repealed.]

33-3101. Establishment of school. — An institute of higher education for the state of Idaho is hereby established in the city of Lewiston, in the county of Nez Perce, to be called the Lewis-Clark State College, heretofore called the Lewis-Clark Normal School, the purposes of which shall be the offering and the giving of instruction in four (4) year college courses in science, arts and literature, and such courses or programs as are usually included in liberal arts colleges leading to the granting of the degree of Bachelor, upon completion of such courses or programs as have been approved by the state board of education.

The board of trustees may also establish educational, professional-technical and other courses or programs of less than four (4) years, as it may deem necessary, and such courses or programs may be given or conducted on

or off campus, or in night school, summer schools, or by extension courses. [1893, p. 6, § 1; reen. 1899, p. 164, § 1; R.C., § 500; reen. C.L., § 500; C.S., § 1080; I.C.A., § 32-2501; am. 1947, ch. 99, § 2, p. 182; am. 1955, ch. 76, § 1, p. 147; am. 1963, ch. 76, § 1, p. 271; am. 1971, ch. 44, § 1, p. 92; am. 1999, ch. 329, § 34, p. 852.]

STATUTORY NOTES

Cross References. — Appropriation for Lewis-Clark State College, § 33-3302.

School under supervision of state board of education and board of regents of the Uni-

versity of Idaho, § 33-101.

Tuition at state colleges and universities not required, exceptions, § 33-3717.

JUDICIAL DECISIONS

Cited in: Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955).

33-3102. Board of trustees. — The Lewis-Clark State College is hereby declared to be a body politic and corporate, with its own seal and having power to sue and be sued in its own name. The general supervision, government and control of the Lewis-Clark State College is vested in the state board of education, which shall act as the board of trustees of the Lewis-Clark State College. [1893, p. 6, § 2; reen. 1899, p. 164, § 2; 1899, p. 369, § 1; R.C., § 501; 1913, ch. 77, §§ 1, 3, p. 328; C.L., § 501; C.S., § 1081; I.C.A., § 32-2502; am. 1947, ch. 99, § 3, p. 182; am. 1971, ch. 44, § 2, p. 92.]

STATUTORY NOTES

Cross References. — Body politic and corporate under Educational Institutions Act of 1935, § 33-3803.

33-3103. Meetings, officers, and proceedings of board. — The said board of trustees may conduct its proceeding in such manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time[.] No member of said board of trustees shall participate in any proceeding in which he has any pecuniary interest. Every vote and official act of the said board of trustees shall be entered of record. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of the said board of trustees. At their first meeting, and annually thereafter, the said board of trustees shall elect from their number a chairman, a vice-chairman and a secretary. The state treasurer shall be treasurer of said board of trustees. It shall be the duty of the secretary to keep an accurate and detailed account of the doings of the board. [1893, p. 6, § 3; reen. 1899, p. 164, § 3; reen. R.C. & C.L., § 502; C.S., § 1082; I.C.A., § 32-2503; am. 1971, ch. 44, § 3, p. 92.]

STATUTORY NOTES

Cross References. — Meetings of state board of education, § 33-104.

State board of education to act as board of trustees, § 33-3701.

Compiler's Notes. — The bracketed period was inserted at the end of the second sentence because it was inadvertently deleted by S.L. 1971, chapter 44.

33-3104. General powers and duties of board. — All rights and title to property, real or personal, belonging to or vested in the Lewis-Clark State College are hereby vested in its board of trustees and their successors. The board of trustees is empowered to acquire, by purchase or exchange, any property which in the judgment of the board is needful for the operation of the Lewis-Clark State College; and to dispose of, by sale or exchange, any property which in the judgment of the board is not needful for the operation of the college.

The board of trustees of the Lewis-Clark State College shall have the following powers:

1. To adopt rules and regulations for its own government and for that of the college.

2. To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the grantor.

3. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program, to accept grants or gifts from any source for the conduct of such program; and to conduct such program on or off campus.

4. To employ architects or engineers in planning the construction, remodeling or repair of any building or property, and whenever no other agency is designated by law to do so, to let contracts for such construction, remodeling or repair and to supervise the work thereof.

5. To have at all times, general supervision and control of all property, real or personal, appertaining to the college, and to insure the same. [1893, p. 6, § 4; reen. 1899, p. 164, § 4; reen. R.C. & C.L., § 503; C.S., § 1083; I.C.A., § 32-2504; am. 1971, ch. 44, § 4, p. 92.]

STATUTORY NOTES

Cross References. — Contract for housing facilities at state institutions, § 33-3701. Permanent building fund, § 57-1101 et seq.

33-3105. Control of funds — Disbursements. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1893, § 5, p. 6; 1899, p. 164, § 5; R.C. & C.L., § 504; C.S., § 1084; 1947, ch. 99, § 4, was repealed by S.L. 1971, ch. 44, § 10.

33-3106. President and other teachers, officers, and employees — Salaries and duties — Removal. — The board of trustees shall have power to employ a president of the college and, with his advice, to appoint

such assistants, deans, instructors, specialists and other employees as are required for the operation of the college; to fix salaries and to prescribe duties and to remove the president or other employees in accordance with the policies and rules of the state board of education. [1893, p. 6, § 7; reen. 1899, p. 164, § 7; reen. R.C. & C.L., § 506; C.S., § 1085; I.C.A., § 32-2506; am. 1947, ch. 99, § 5, p. 182; am. 1971, ch. 44, § 5, p. 92.]

RESEARCH REFERENCES

A.L.R. — Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 A.L.R.3d 1047.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 A.L.R.3d 19.

33-3107. Course of study, certificates, and diplomas. — It shall be the duty of the board of trustees, with the advice of the president, to prescribe the courses and programs of study, the requirements for admission, the time and standard for graduation, and to grant academic degrees to those students entitled thereto. [1893, p. 6, § 8; reen. 1899, p. 164, § 8; reen. R.C. & C.L., § 507; C.S., § 1086; I.C.A., § 32-2507; am. 1971, ch. 44, § 6, p. 92.]

33-3108 — 33-3112. Textbooks — Admission of students — Courses of instruction. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 512; C.S., §§ 1087-1091; I.C.A. §§ 32-2508 — which comprised S.L. 1893, p. 6, §§ 9-13; 32-2512; 1947, ch. 99, §§ 6-9, were repealed 1899, p. 164, §§ 9-13; R.C. & C.L., §§ 508- by S.L. 1971, ch. 44, § 10.

33-3113. Sectarian tests prohibited. — No religious or sectarian test shall be applied in the admission of students, nor in the selection of instructors or other personnel of the college. [1893, p. 6, § 17; reen. 1899, p. 164, § 17; reen. R.C. & C.L., § 514; C.S., § 1092; I.C.A., § 32-2513; am. 1947, ch. 99, § 10, p. 182; am. 1971, ch. 44, § 7, p. 92.]

STATUTORY NOTES

Cross References. — Religious tests, qualifications, and teachings prohibited, Const., Art. IX, § 6.

33-3114. Transfer and control of funds. — All of the funds and money in the dormitory fund and dining fund, including any revolving fund, of the Lewis-Clark Normal School, as the same is authorized by sections 33-3701 — 33-3711, Idaho Code, and all of the unexpended funds hereto allocated and appropriated to the Lewis-Clark Normal School for the purposes specified therein, and all of the educational or other endowment funds, holdings, rights, privileges and immunities of the Lewiston Normal School, the Northern Idaho College of Education, and the Lewis-Clark Normal School, and any allocations or appropriations from the normal

school fund, as provided by section 33-3302, Idaho Code, are hereby transferred to, vested in and continued in the Lewis-Clark State College and placed under the control of its board of trustees, and appropriated for expenditure by it and shall be paid out by the state treasurer in the manner provided by the constitution and laws of the state of Idaho. All of the property, real and personal, and all of the obligations, legal and moral, of the Lewiston Normal School, the Northern Idaho College of Education, and of the Lewis-Clark Normal School, are hereby vested in, or shall become the obligations of, the Lewis-Clark State College. [1947, ch. 99, § 11, p. 182; am. 1971, ch. 44, § 8, p. 92.]

33-3115. Transfer of property. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1947, ch. 99, § 14, was repealed by S.L. 1971, ch. 44, § 10.

33-3116. Construction of references to Lewiston State Normal School. — Wherever the name Lewiston Normal School, or Northern Idaho College of Education, or Lewis-Clark Normal School, shall appear in any statute, such statute is hereby amended to read Lewis-Clark State College as fully and completely as though the said name on said statute was specifically amended therein, and all such statutes shall be construed to refer to and mean Lewis-Clark State College. [1947, ch. 99, § 17, p. 182; am. 1971, ch. 44, § 9, p. 92.]

STATUTORY NOTES

Effective Dates. — Section 11 of S.L. 1971, ch. 44 provided that this act should be in full force and effect on and after July 1, 1971.

33-3117, 33-3118. Construction of references to Northern Idaho College of Education — Separability. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1955, ch. 76, § 2, and S.L. 1947, ch. 99, § 18 respectively, were repealed by S.L. 1971, ch. 44, § 10.

CHAPTER 32

SOUTHERN IDAHO COLLEGE OF EDUCATION

SECTION.

33-3201. [Repealed.]

33-3202. Title to property.

33-3203 — 33-3206. [Repealed.]

SECTION.

33-3207. Conflict.

33-3201. Declaration of policy. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised S.L. 1957, ch. 30, § 1, p. 46, was repealed by S.L. 1969, ch. 417, § 1.

33-3202. Title to property. — All the rights, powers, duties, and title to real estate or personal property belonging to or vested in said Southern Idaho College of Education are hereby vested in the state board of land commissioners and their successors in office with full power vested in the state board of land commissioners to lease or sell such property in their name and in the name of the state of Idaho. [1957, ch. 30, § 2, p. 46.]

STATUTORY NOTES

Cross References. — State land board, art. IX, § 7, Idaho Const., and § 58-101.

33-3203 — 33-3206. Power to lease or sell property — Terms and conditions of the lease or sale — Excluded property. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1957, ch. 30, §§ 3-6, were repealed by S.L. 1969, ch. 417, § 1.

33-3207. Conflict. — All statutes [statutes] and laws of the state of Idaho that may conflict with this act shall be inapplicable. [1957, ch. 30, § 7, p. 46.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "statutes" was inserted by the compiler.

The words "this act" refer to S.L. 1957, ch. 30, §§ 2 and 7, compiled as § 33-3202 and this section.

Section 8 of S.L. 1957, ch. 30 read: "The provisions of this act are hereby declared to be

separable and if any section, clause or phrase thereof is hereafter declared unconstitutional, the same shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 10 of S.L. 1957, ch. 30 declared an emergency. Approved February 12, 1957.

CHAPTER 33**NORMAL SCHOOLS — FEDERAL EDUCATIONAL AID****SECTION.**

33-3301. Normal school permanent endowment fund.

33-3301A. Normal school earnings reserve fund.

33-3301B. Normal school income fund.

SECTION.

33-3302. Appropriation for Lewis-Clark State College.

33-3303. Appropriation for support and maintenance of an Albion Normal School Field Institute.

SECTION.

33-3304. Appropriation for the department of education at Idaho State University.

33-3305. Appropriation for asbestos removal

and building demolition of all Albion state normal school buildings not of practical value to the city of Albion.

33-3301. Normal school permanent endowment fund. — (1) There is established in the state treasury the normal school permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

(a) Proceeds of the sale of any of the lands granted to the state of Idaho by the United States government under the provisions of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, known as normal school endowment lands, and those granted in lieu of such;

(b) Proceeds of royalties arising from the extraction of minerals on normal endowment school lands owned by the state; and

(c) Moneys allocated from the normal school earnings reserve fund.

(2) Provided however, that proceeds from the sale of normal school endowment lands may be first deposited into the land bank fund established in section 58-133, Idaho Code, to be used to acquire other lands within the state for the benefit of endowment beneficiaries. If the land sale proceeds are not used to acquire other lands in accordance with section 58-133, Idaho Code, the proceeds shall be deposited into the normal school permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the normal school permanent endowment fund shall be distributed according to the provisions of section 57-723A, Idaho Code. [I.C., § 33-3301, as added by 1998, ch. 256, § 26, p. 825.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

Normal school earnings reserve fund, § 33-3301A.

State board of land commissioners, art. IX, § 7, Idaho Const., and § 58-101.

Prior Laws. — Former § 33-3301, which comprised 1905, p. 393, §§ 1, 2; R.C., § 17, subd. 66; reen. C.L. 43:1; C.S., § 1107; I.C.A., § 32-2701; am. 1947, ch. 99, § 15, p. 182; am. 1947, ch. 100, § 14, p. 190; am. 1957, ch. 318, § 1, p. 678; am. 1971, ch. 43, § 1, p. 91; am. 1994, ch. 180, § 51, p. 420; am. 1994, ch. 222, § 1, p. 708, was repealed by S.L. 1998, ch. 256, § 25.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has ap-

proved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improve-

ment funds to the respective earnings reserve funds.”

The contingencies noted above concerning

the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-3301A. Normal school earnings reserve fund. — (1) There is established in the state treasury the normal school earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

- (a) All earnings of the normal school permanent endowment fund;
- (b) Proceeds of the sale of timber growing on normal school endowment lands;
- (c) Proceeds of leases of normal school endowment lands;
- (d) Proceeds of interest upon deferred payments on normal school endowment lands or timber on those lands; and
- (e) All other proceeds received from the use of normal school endowment lands and not otherwise designated for deposit in the normal school permanent endowment fund.

(2) Moneys shall be distributed out of the normal school earnings reserve fund only to support the beneficiaries of the normal school endowment, including distributions by the state board of land commissioners to the normal school permanent endowment fund and the normal school income fund; provided, that funds shall not be appropriated by the legislature from the normal school earnings reserve fund except to pay for administrative costs incurred managing the assets of the normal school endowment including, but not limited to, real property and monetary assets. [I.C., § 33-3301A, as added by 1998, ch. 256, § 27, p. 825.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

Normal school income fund, § 33-3301B.

Normal school permanent endowment fund, § 33-3301.

State board of land commissioners, art. IX, § 7, Idaho Const., and § 58-101.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: “This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been

adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-3301B. Normal school income fund. — There is established in the state treasury the normal school income fund. The fund shall consist of all moneys distributed from the normal school earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the normal

school income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the normal school endowment pursuant to legislative appropriation. However, not more than fifty percent (50%) of earnings of the normal school income fund shall ever be appropriated for the support and maintenance of either Lewis-Clark State College or the department of education at Idaho State University. [I.C., § 33-3301B, as added by 1998, ch. 256, § 28, p. 825.]

STATUTORY NOTES

Cross References. — Normal school earnings reserve fund, § 33-3301A.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and

investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-3302. Appropriation for Lewis-Clark State College. — Fifty percent (50%) of all moneys that now are in or which may hereafter accrue to the normal school income fund are perpetually appropriated and set apart for the support and maintenance of the Lewis-Clark State College, the same to be available for such purpose immediately upon their being credited to the fund. [1905, p. 393, § 6; R.C., § 17, subd. 66; compiled and reen. C.L., 43:2; C.S., § 1108; I.C.A., § 32-2702; am. 1947, ch. 99, § 16, p. 182; am. 1971, ch. 43, § 2, p. 91; am. 1994, ch. 222, § 2, p. 708; am. 1998, ch. 256, § 29, p. 825.]

STATUTORY NOTES

Cross References. — Normal school income fund, § 33-3301B.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and

investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-3303. Appropriation for support and maintenance of an Albion Normal School Field Institute. — Subject to legislative approval by adoption of a concurrent resolution in both houses approving a department of parks and recreation memorandum of understanding negotiated between the Idaho department of parks and recreation and the city of Albion and other public or private agencies interested in cooperative management of an Albion Normal School Field Institute within an Albion State Normal School state park complex, the appropriately designated state agency shall receive three percent (3%) of all moneys that are now in or which may hereafter accrue to the normal school income fund, the same to be set apart for support and maintenance of the Albion Normal School Field Institute. The memorandum of understanding negotiated by the Idaho department of parks and recreation and the city of Albion and other public or private agencies interested in cooperative management of an Albion Normal School Field Institute within an Albion State Normal School state park complex shall be negotiated in accordance with guidelines established in the Idaho department of parks and recreation's Albion Campus General Development Plan. [I.C., § 33-3303, as added by 1994, ch. 222, § 4, p. 708; am. 1998, ch. 256, § 30, p. 825.]

STATUTORY NOTES

Cross References. — Normal school income fund, § 33-3301B.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and

investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-3304. Appropriation for the department of education at Idaho State University. — Fifty percent (50%) of all the moneys that now are in or which may hereafter accrue to the normal school income fund are hereby appropriated and set apart for the support and maintenance of the department of education at Idaho State University, the same to be available for such purpose immediately upon their being credited to the fund. Should the legislature, by adoption of a concurrent resolution in both houses, approve a memorandum of understanding negotiated by the Idaho department of parks and recreation between the city of Albion and other public or private agencies interested in cooperative management of an Albion Normal School Field Institute within an Albion State Normal School state park complex, the percentage share for the department of education at Idaho State University shall be reduced from fifty percent (50%) to forty-seven percent (47%). In the event that the memorandum of understanding is not approved,

section 33-3305, Idaho Code, shall apply. [I.C., § 33-3304, as added by 1905, p. 393, § 4; R.C., § 17, subd. 66; compiled and reen. C.L., 43:3; C.S., § 1109; I.C.A., § 32-2703; am. 1947, ch. 100, § 15, p. 190; am. 1957, ch. 318, § 2, p. 678; am. 1971, ch. 43, § 3, p. 91; am. and redesign. 1994, ch. 222, § 3, p. 708; am. 1998, ch. 256, § 31, p. 825.]

STATUTORY NOTES

Cross References. — Normal school income fund, § 33-3301B.

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and

investing of permanent endowment funds.

"Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

"Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

33-3305. Appropriation for asbestos removal and building demolition of all Albion state normal school buildings not of practical value to the city of Albion. — In the event that the memorandum of understanding of section 33-3303, Idaho Code, as negotiated by the Idaho department of parks and recreation between the city of Albion and other public and private agencies interested in cooperative management of an Albion Normal School Field Institute that is within an Albion State Normal School state park complex is not approved by the legislature, separate legislative appropriation by joint finance appropriations committee action shall be given due consideration by the legislature for the express purpose of asbestos removal and building demolition of all campus buildings not of practical value to the city of Albion. [I.C., § 33-3305, as added by 1994, ch. 222, § 5, p. 708.]

CHAPTER 34

IDAHO SCHOOL FOR THE DEAF AND THE BLIND

SECTION.

- 33-3401. Establishment of school for the deaf and the blind.
- 33-3402. Body politic and corporate — Board of trustees.
- 33-3403. Organization, meetings and proceedings of board.
- 33-3404. Title to property — Acquiring, selling or exchanging property.

SECTION.

- 33-3405. General powers of board.
- 33-3406. Sectarian tests prohibited.
- 33-3407. Definition of the deaf and the blind
 - Examination of applicants
 - Admission and release of pupils.
- 33-3408. Reporting deaf and blind pupils.
- 33-3409. General fund contingency reserve.

33-3401. Establishment of school for the deaf and the blind. — The establishment by law of a school to provide supplemental education

services to deaf and blind students statewide is hereby ratified and affirmed. These services may include residential and day campus programs and an outreach program, intended to provide services to students outside the campus area, as well as early intervention and family consultation. The school is to be called the Idaho school for the deaf and the blind, and its operation continued. It is further provided that wherever the term "State School for the Deaf and the Blind" shall appear in the Idaho Code it shall mean "Idaho School for the Deaf and the Blind." [1963, ch. 102, § 1, p. 320; am. 1990, ch. 237, § 2, p. 674; am. 2006, ch. 383, § 1, p. 1201.]

STATUTORY NOTES

Cross References. — School under control of state board of education, § 33-101.

Prior Laws. — Former chapter 34 of title 33 which consisted of the following former sections was repealed by S.L. 1963, ch. 102, § 9:

33-3401. (1909, p. 379, § 1; modified by 1911, ch. 42, p. 97; compiled and reen. C.L., 46:1; C.S., § 1122; I.C.A., § 32-2901; am. 1961, ch. 26, § 1, p. 34).

33-3402. (1909, p. 379, § 2; compiled and reen. C.L. 46:2; C.S., § 1123; I.C.A., § 32-2902).

33-3403. (1907, p. 240, § 2; reen. R.C., § 801; am. 1909, p. 379, § 3; reen. C.L. 46:3; C.S., § 1124; I.C.A., § 32-2903).

33-3404. (1907, p. 240, § 3; reen. R.C., § 802; reen. 1909, p. 379, § 4; reen. C.L., § 46:4; C.S. § 1125; I.C.A., § 32-2904).

33-3405. (1907, p. 240, § 4; reen. R.C., § 803; am. 1909, p. 379, § 5; reen. C.L. 46:5;

C.S., § 1126; I.C.A., § 32-2905).

33-3406. (1907, p. 240, § 5; reen. R.C., § 804; reen. 1909, p. 379, § 6; reen. C.L. 46:6; C.S., § 1127; I.C.A., § 32-2906).

Amendments. — The 2006 amendment, by ch. 383, substituted the current first through third sentences for the former first sentence, which read: "The establishment by law of a school for the deaf and blind at Gooding, Idaho, is hereby ratified and affirmed, said school to be called the Idaho School for the Deaf and the Blind, and its operation continued."

Compiler's Notes. — Act 1909, p. 379, H.B. 194, which formed the basis of the former chapter, repealed R.C., §§ 800-804, originally enacted by 1907, p. 240, but its provisions, in effect, reenacted §§ 801-804. Such amendatory act of 1909 did not provide, as did the original, for the education of the dumb.

33-3402. Body politic and corporate — Board of trustees. — The Idaho School for the Deaf and the Blind is hereby declared to be a body corporate, with its own seal and having power to sue and be sued in its own name. The general supervision, government and control of the Idaho School for the Deaf and the Blind is vested in the state board of education, which shall act as the board of trustees of the Idaho School for the Deaf and the Blind. [1963, ch. 102, § 2, p. 320; am. 1990, ch. 237, § 3, p. 674.]

STATUTORY NOTES

Cross References. — State board of education, § 33-101.

Prior Laws. — Former § 33-3402 was repealed. See Prior Laws, § 33-3401.

33-3403. Organization, meetings and proceedings of board. — The board of trustees, at its first meeting and annually thereafter, shall organize by electing a chairman, a vice-chairman and a secretary. A majority of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. No member of the board shall participate in any proceeding in which he has a pecuniary interest. No vacancy on the board shall impair the right of the remaining trustees to

exercise all the powers of the board. Every vote and official act of the board shall be entered of record. The state treasurer shall serve as treasurer of the board. It shall be the duty of the secretary to keep a detailed account of the doings of the board. [1963, ch. 102, § 3, p. 320.]

STATUTORY NOTES

Cross References. — Meetings of the state board of education, § 33-104.

Prior Laws. — Former § 33-3403 was repealed. See Prior Laws, § 33-3401.

33-3404. Title to property — Acquiring, selling or exchanging property. — All rights and title to property, real and personal, belonging to or vested in the Idaho School for the Deaf and the Blind are hereby vested in its board of trustees and their successors. The board of trustees is empowered to acquire, by purchase or exchange, any property which in the judgment of the board is needful for the operation of the Idaho School for the Deaf and the Blind, and to dispose of, by sale or exchange, any property which in the judgment of the board is not needful for the operation of the same. [1963, ch. 102, § 4, p. 320; am. 1990, ch. 237, § 4, p. 674.]

STATUTORY NOTES

Prior Laws. — Former § 33-3404 was repealed. See Prior Laws, § 33-3401.

RESEARCH REFERENCES

A.L.R. — Schools for deaf: what constitutes "school," "educational use," or the like within zoning ordinance. 64 A.L.R.3d 1087.

33-3405. General powers of board. — The board of trustees of the Idaho school for the deaf and the blind shall have the following powers:

(1) To adopt rules and regulations for its own government and that of the school;

(2) To employ a superintendent of the school, and, with his advice, to appoint such assistants, instructors, specialists and other employees as are required for the operation of the school; to fix salaries and prescribe duties; to remove the superintendent or other employees in accordance with the policies and rules of the state board of education; and to, at the discretion of the superintendent, allow all employees eligible for benefits to elect to receive their salary on a year-round basis. Such a payment schedule shall not be considered a guarantee of employment;

(3) With the advice of the superintendent, to prescribe the course of study, the textbooks to be used, and for those pupils who complete the requirements for grade twelve (12), the time and standard of graduation;

(4) To have at all times, general supervision and control of all property, real and personal, appertaining to the school, and to insure the same;

(5) To employ architects or engineers in planning the construction, remodeling or repair of any building and, whenever no other agency is

designated so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof;

(6) To expend moneys appropriated, or otherwise placed to the credit of the school for the maintenance and operation thereof, and to account for the same as prescribed by law;

(7) To provide for the conveyance of pupils to and from the school, the expense of such conveyance being a lawful use of the moneys available to the board of trustees. [1963, ch. 102, § 5, p. 320; am. 1990, ch. 237, § 5, p. 674; am. 2005, ch. 65, § 3, p. 228; am. 2005, ch. 258, § 1, p. 794.]

STATUTORY NOTES

Cross References. — Permanent building fund, § 57-1101 et seq.

Prior Laws. — Former § 33-3405 was repealed. See Prior Laws, § 33-3401.

Amendments. — This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 65, § 3, sub-

stituted “or other employees in accordance with the policies and rules of the state board of education” for “or any other employee for cause” in subsection (2).

The 2005 amendment, by ch. 258, § 1, added the phrase beginning “and to, at the discretion of the superintendent,” at the end of subsection (2) and made a stylistic change.

33-3406. Sectarian tests prohibited. — No religious or sectarian tests shall be applied to the admission of students, nor in the selection of instructors or other personnel of the school. [1963, ch. 102, § 6, p. 320.]

STATUTORY NOTES

Cross References. — Religious tests, qualifications and teachings prohibited, Const., Art. IX, § 6.

Prior Laws. — Former § 33-3406 was repealed. See Prior Laws, § 33-3401.

33-3407. Definition of the deaf and the blind — Examination of applicants — Admission and release of pupils. — All children between the ages of six (6) and twenty-one (21) years who qualify to receive special education services pursuant to state or federal law as a result of a hearing or visual impairment, shall be deemed deaf or blind for the purposes of this chapter.

Children who are under the age of six (6) years, but otherwise qualified, may be served, when, in the discretion of the superintendent but subject to the approval of the board of trustees, they are proper subjects to receive training and education from the school, and the adequate facilities for proper education, training and/or care are available. When it has been ascertained by the superintendent that any pupil has ceased to make progress, or is no longer being benefited by the school’s services, upon recommendation of the superintendent and the approval of the board of trustees such pupil may be released from the school and/or school services may be discontinued.

The board of trustees is authorized to provide for the careful examination of all applicants for admission to the school, and the expense of such examination is a lawful use of the moneys available to the board of trustees. [1963, ch. 102, § 7, p. 320; am. 2006, ch. 383, § 2, p. 1201; am. 2007, ch. 90, § 16, p. 246.]

STATUTORY NOTES

Cross References. — Denial of use of facilities by person accompanied by guide dog for the blind prohibited, § 18-5812B.

Amendments. — The 2006 amendment, by ch. 383, in the first paragraph, substituted “qualify to receive special education services pursuant to state or federal law as a result of a hearing or visual impairment” for “who are too deaf or too blind to be educated in the public schools”; in the second paragraph, substituted “served” for “admitted,” “from the

school, and the adequate facilities for proper education, training and/or available” for “available in the school and the facilities of the school are adequate for proper care, training and education,” “school’s services” for “attending the school,” and inserted “and/or school services may be discontinued.”

The 2007 amendment, by ch. 90, inserted “who” preceding “qualify” in the first paragraph.

33-3408. Reporting deaf and blind pupils. — On or before the first day of February, in each year, the clerk of each school district, including elementary school districts and especially chartered school districts shall report the number of deaf and blind pupils, as defined in section 33-3407, Idaho Code, attending the school or schools of the district, and any such person, not a pupil in the school, of whom he may have knowledge.

Such report shall be made to the superintendent of the Idaho School for the Deaf and the Blind, upon forms approved by the state board of education. [1963, ch. 102, § 8, p. 320; am. 1990, ch. 237, § 6, p. 674.]

STATUTORY NOTES

Effective Dates. — Section 10 of S.L. 1963, ch. 102, provided that the act should take effect on and after July 1, 1963.

33-3409. General fund contingency reserve. — The board of trustees of the Idaho school for the deaf and the blind may create and establish a general fund contingency reserve within the annual Idaho school for the deaf and the blind budget. Such general fund contingency reserve shall not exceed five percent (5%) of the total general fund appropriation to the Idaho school for the deaf and the blind. Disbursements from this continuously appropriated fund may be made as the board of trustees determines necessary for contingencies that may arise. The balance of the contingency fund may be accumulated beyond the budgeted fiscal year, but shall never exceed five percent (5%) of the current year’s appropriation to the Idaho school for the deaf and the blind. [I.C., § 33-3409, as added by 2002, ch. 334, § 1, p. 949.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2002, ch. 334 declared an emergency. Approved March 27, 2002.

CHAPTER 35

STATE YOUTH SERVICES CENTER

SECTION.

33-3501 — 33-3503. [Amended and Redesignated.]

33-3504. [Repealed.]

33-3505. [Amended and Redesignated.]

SECTION.

33-3506. Sectarian tests prohibited.

33-3507. Religious services.

33-3508. Report of director.

33-3509 — 33-3513. [Repealed.]

33-3501. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-3501 by § 50 of S.L. 1995, ch. 44 and repealed by was amended and redesignated as § 20-543 S.L. 1997, ch. 83, § 4.

33-3502. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-3502 by § 51 of S.L. 1995, ch. 44 and repealed by was amended and redesignated as § 20-544 S.L. 1995, ch. 277, § 10.

33-3503. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-3503 by § 52 of S.L. 1995, ch. 44 and repealed by was amended and redesignated as § 20-545 S.L. 1997, ch. 83, § 4.

33-3504. Title to property — Acquiring, selling or exchanging property. [Repealed.]

STATUTORY NOTES

Prior Laws. — Another § 33-3504, which comprised 1903, p. 12, § 4; reen. R.C., § 808; compiled and reen. C.L. 47:4; C.S., § 1131; I.C.A., § 32-3004, was repealed by S.L. 1963, ch. 168, § 9.

Compiler's Notes. — This section, which comprised 1963, ch. 168, § 4, p. 486, was repealed by S.L. 1990, ch. 367, § 4.

33-3505. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-3505 by § 53 of S.L. 1995, ch. 44 and repealed by was amended and redesignated as § 20-546 S.L. 1997, ch. 83, § 4.

33-3506. Sectarian tests prohibited. — No religious or sectarian tests shall be applied to the selection of instructors or other employed personnel of the school. [1963, ch. 168, § 6, p. 486.]

STATUTORY NOTES

Cross References. — Religious tests, § 1134; I.C.A., § 32-3006). qualifications and teachings prohibited, 33-3507. (1903, p. 12, last par. of § 9 and Const., Art. IX, § 6. § 10; reen. R.C., § 813; reen. C.L. 47-9; C.S., § 1135; I.C.A., § 32-3007).

Prior Laws. — Former §§ 33-3506 — 33-3508 were repealed by S.L. 1963, ch. 168, § 9: 33-3506. (1903, p. 12, § 8 and 1st part of § 9; am. R.C., § 812; reen. C.L., 47-8; C.S., § 32-3008). 33-3508. (1903, p. 12, § 11; reen. R.C., § 814; reen. C.L. 47:10; C.S., § 1136; I.C.A., § 32-3008).

33-3507. Religious services. — The superintendent shall provide for the holding of religious services on the Sabbath Day for the inmates of said school, such services to be conducted by ministers of the several religious denominations to which the inmates may belong. [1963, ch. 168, § 7, p. 486.]

STATUTORY NOTES

Prior Laws. — Former § 33-3507 was repealed. See Prior Laws, § 33-3506.

33-3508. Report of director. — The director shall, at the close of each month, present a report to the board of trustees showing the number of students admitted, the number in attendance and the number discharged and whether by parole or otherwise, and the general condition of the school and such other information, suggestions and recommendations as may be to the best interests of the school. [1963, ch. 168, § 8, p. 486; am. 1974, ch. 23, § 13, p. 633.]

STATUTORY NOTES

Prior Laws. — Former § 33-3508 was repealed. See Prior Laws, § 33-3506. take effect on and after July 1, 1963.

Effective Dates. — Section 10 of S.L. 1963, ch. 168, provided that the act should and after July 1, 1974. Section 182 of S.L. 1974, ch. 23, provided the act should be in full force and effect on and after July 1, 1974.

33-3509 — 33-3513. Appointment and qualifications of teachers — Report and duties of superintendent — Religious services — School as independent district — School to be nonsectarian — Courses of study. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised 1903, p. 12, §§ 12, 13, 15, 18, 27; reen. R.C., §§ 815, 816, 818, 820, 822; reen. C.L., §§ 47:11-47:15; C.S., §§ 1137-1141; I.C.A., §§ 32-3009 — 32-3013, were repealed by S.L. 1963, ch. 168, § 9.

CHAPTER 36

COMPACT FOR COOPERATION IN HIGHER EDUCATION

SECTION.

33-3601. Interstate compact for Western Regional Cooperation in Higher Education ratified.

SECTION.

33-3602. Operative date of compact.

33-3603. Appointment of Idaho members of commission.

SECTION.

33-3604. Determination of cost per student
— Repayment — Cancellation

of debt when practicing profession.

33-3601. Interstate compact for Western Regional Cooperation in Higher Education ratified. — The State of Idaho does hereby ratify, approve, adopt and confirm the Interstate Compact for Western Regional Cooperation in Higher Education heretofore entered into between the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, and the Territories of Alaska and Hawaii, which said compact is, in words and figures as follows:

ARTICLE I

WHEREAS, the future of this Nation and of the Western States is dependent upon the quality of the education of its youth; and

WHEREAS, many of the Western States individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the States have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, it is believed that the Western States, or groups of such states within the Region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the Region and of the students thereof:

Now, therefore, the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and the Territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this Compact.

ARTICLE III

The compacting states and territories hereby create the Western Interstate Commission for Higher Education, hereinafter called the Commission. Said Commission shall be a body corporate of each compacting state and territory and an agency thereof. The Commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

The Commission shall consist of three resident members from each compacting state or territory. At all times one Commissioner from each

compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The Commissioners from each state and territory shall be appointed by the Governor thereof as provided by law in such state or territory. Any Commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each Commissioner shall be four years; provided however that the first three Commissioners shall be appointed as follows: one for two years, one for three years, and one for four years. Each Commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the Governor shall appoint a Commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

Any business transacted at any meeting of the Commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more Commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the Commission is entitled to one vote.

ARTICLE VI

The Commission shall elect from its number a chairman and a vice chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents, and employees as may be required to carry out the purpose of this Compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The Commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the Commission.

ARTICLE VII

The Commission shall adopt a seal and by-laws and shall adopt and promulgate rules and regulations for its management and control.

The Commission may elect such committees as it deems necessary for the carrying out of its functions.

The Commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The Chairman may call such additional meetings and upon the request of a majority of the Commissioners of three or more compacting states or territories shall call additional meetings.

The Commission shall submit a budget to the Governor of each compacting state and territory at such time and for such period as may be required.

The Commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the Region.

On or before the fifteenth day of January of each year, the Commission shall submit to the Governors and Legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the Governor of any compacting state or territory or his designated representative. The Commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The Commission shall provide for an independent annual audit.

ARTICLE VIII

It shall be the duty of the Commission to enter into such contractual agreements with any institutions in the Region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the Commission to provide adequate services and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The Commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the Commission may enter into contractual agreements—

(a) with the governing authority of any educational institution in the Region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties, and

(b) with the governing authority of any educational institution in the Region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the Region providing the desired services and facilities, upon such terms and conditions as the Commission may prescribe.

It shall be the duty of the Commission to undertake studies of needs for professional and graduate educational facilities in the Region, the resources for meeting such needs, and the long-range effects of the Compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territories. In conducting such studies, the Commission may confer with any national or regional planning body which may be established. The Commission shall draft and recommend to the Governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the Region.

For the purposes of this Compact the word "Region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the Commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This Compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This Compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This Compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and Governor of such terminating state. Any state or territory may at any time withdraw from this Compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two years after written notice thereof by the Governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the Commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the Commission.

ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this Compact, all rights, privileges and benefits conferred by this Compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the Commission.

Unless such default shall be remedied within a period of two years following the effective date of such default, this Compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the Commission. [1953, ch. 248, § 1, p. 391.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-4001.

In addition to the states listed at the beginning of this compact, North Dakota adopted

the compact effective July 1, 1984, and South Dakota adopted the compact effective July 1, 1988.

33-3602. Operative date of compact. — The foregoing compact shall as to the state of Idaho become operative, and shall be in full force and effect in accordance with the provisions of Article X thereof, upon the passage and approval of this act, and the Governor shall thereafter execute the Compact by and on behalf of this state in accordance with the terms thereof. [1953, ch. 248, § 2, p. 391.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-4002.

Effective Dates. — Pursuant to Article X

of the compact and this section, the compact became operative in Idaho on May 13, 1953.

33-3603. Appointment of Idaho members of commission. — (a) The Governor shall thereupon appoint the Idaho members of the Western Interstate Commission for Higher Education.

(b) The qualifications and terms of office of the members of the Commission for this state shall conform with the provisions of Article IV of the Compact as it appears in section 33-3601.

(c) The Governor may remove a member of the Commission for cause after notice and public hearing. [1953, ch. 248, § 3, p. 391.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-4003.

33-3604. Determination of cost per student — Repayment — Cancellation of debt when practicing profession. — The Idaho members of the Western Interstate Commission for Higher Education shall annually determine the cost to the state of Idaho of each student attending any out of state institution under the provisions of this chapter.

Each student attending any institution under the provisions of this act shall, by the acceptance of the benefits of this act, become obligated to the state of Idaho for the cost to the state of Idaho for such student, as determined by the Idaho members of the Western Interstate Commission for Higher Education. Such sum or sums, together with interest thereon at the rate of five per cent (5%) per annum from the time of the expenditure by the state of Idaho shall be repaid as follows: one-fourth (1/4) of said sum, together with accrued interest on or before three (3) years from the date such student completes or terminates his education and/or internship and one-fourth (1/4) of such sum with accrued interest on the same date annually thereafter until said sum, together with accrued interest shall have been fully paid. In case any student shall fail to make payment in

accordance with the provisions of this section, the total unpaid balance shall become immediately due and payable and shall be recovered by suit brought by the attorney-general on behalf of the state of Idaho; Provided, however, that any student who shall, within three (3) years of completion of his education, engage in the practice of his profession continuously for the period of two (2) years in the state of Idaho, shall not be obligated to repay the cost of his education or any part thereof. [I.C., § 33-4004, as added by 1963, ch. 274, § 1, p. 708.]

STATUTORY NOTES

Compiler's Notes. — The words "this act", as used in this section, refer to S.L. 1963, chapter 274, which is codified only as this section. The reference should probably be to "this chapter", being chapter 36, title 33, Idaho Code.

CHAPTER 37

MISCELLANEOUS PROVISIONS RELATING TO STATE INSTITUTIONS OF LEARNING

SECTION.

- 33-3701. Contracts for housing facilities at state institutions.
- 33-3702. Creation of dormitory fund.
- 33-3703. Successors of board.
- 33-3704. Dining hall funds.
- 33-3705, 33-3706. [Repealed.]
- 33-3707. Receipts used in operation of dining halls.
- 33-3708. Dining halls not operated for profit.
- 33-3709. [Repealed.]
- 33-3710. Uniform system of accounting for dining hall funds.
- 33-3711. Liability of state for dining halls limited.
- 33-3712. Office of bursar a public office — Duties and bond of bursar.
- 33-3713. Bursars as fiscal officers — Duty to make reports.
- 33-3714. Acceptance of gifts, legacies and devises.
- 33-3715. Interference with conduct of institutions of higher learning — Legislative intent.

SECTION.

- 33-3716. Unlawful conduct — Penalty.
- 33-3717. Fees at the university of Idaho.
- 33-3717A. Fees at state colleges and universities other than the university of Idaho.
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- 33-3717C. Waiving fees or tuition for certain nonresident students.
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- 33-3719. Student called to active duty.
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- 33-3722. Student education incentive loan forgiveness contract.
- 33-3723. Rural physician incentive fee assessment.
- 33-3724. Rural physician incentive fund.
- 33-3725. Incentive payments from fund.

33-3701. Contracts for housing facilities at state institutions. — The state board of education and board of regents of the University of Idaho, acting as the board of regents of the University of Idaho, or as the board of trustees of the Lewis-Clark Normal School, or as the board of trustees of the Idaho State University are hereby authorized to enter into contracts with persons, firms and corporations, for the purpose of providing dormitory and housing facilities for the students of said institutions; for said purposes said board may contract for the leasing and purchase of lands and buildings and for the purchase and installation of fixtures, furniture, furnishings and equipment in such buildings; said board may contract to pay as rent or otherwise a sum sufficient to pay, on the amortization plan, the principal and interest thereon, of the purchase-price of lands and buildings, such

contracts to run not over twenty (20) years; the rate of interest on the principal on any purchase shall not exceed seven per cent (7%) per annum payable semi-annually or annually. [1923, ch. 72, § 1, p. 79; am. 1929, ch. 132, § 1, p. 216; I.C.A., § 32-3201; am. 1947, ch. 99, § 13, p. 182; am. 1947, ch. 100, § 12, p. 190; am. 1947, ch. 107, § 11, p. 217; am. 1963, ch. 286, § 1, p. 752.]

STATUTORY NOTES

Cross References. — Bonds, issuance under Educational Institutions Act of 1935, § 33-3801 et seq.

33-3702. Creation of dormitory fund. — Said board is hereby authorized to create a separate fund for each of said four [three] institutions, to be known as the "dormitory fund." Said board is hereby authorized to pay into each of said respective dormitory funds, all room, dormitory or housing rentals received by said respective institutions, not including the proceeds of any anticipated appropriations made by the state nor the interest from the permanent endowment, and to pledge on behalf of each of said respective institutions, its said dormitory fund for the payment of all rental or other charges agreed to be paid on account of such dormitory or dormitories as well as for the payment of the purchase-price of land or lands and buildings, or the payment of the agreed cost of construction of such buildings or building, and the purchase-price of fixtures, furniture, furnishings and equipment for such buildings together with the cost of installation thereof; so as to be used for dormitory or housing purposes by said respective institutions, and such dormitory funds, or so much thereof as may be necessary are hereby appropriated for the purposes herein set forth. [1923, ch. 72, § 2, p. 79; am. 1929, ch. 132, § 2, p. 216; I.C.A., § 32-3202.]

STATUTORY NOTES

Compiler's Notes. — The word "three" was bracketed into the first sentence of this section by the compiler, as § 33-3701 was amended in 1963 to cover only three state institutions.

RESEARCH REFERENCES

A.L.R. — Living quarters: tax exemption of property of educational body as extending to property used by personnel as living quarters. 55 A.L.R.3d 485.

Validity, under Federal Constitution, of regulation or policy of college or university requiring students to live in dormitories or residence halls. 31 A.L.R. Fed. 813.

33-3703. Successors of board. — The powers hereby conferred upon the said board of education shall inure to the body, commission, commissioners, officer or officers that may at any time succeed said board. [1923, ch. 72, § 3, p. 79; I.C.A., § 32-3203.]

33-3704. Dining hall funds. — Whereas heretofore and under the supervision of the state board of education in its capacity as board of trustees of the several state educational institutions, there have been

established and are now in operation dining halls, and no clear legislative direction as to disposition to be made of accumulations in dining hall funds exists, now therefore, it is hereby declared that the operation of dining halls at educational institutions under the supervision of, and where deemed necessary by the state board of education, is a public purpose and a necessary incident to the proper government of such educational institutions. [1943, ch. 3, § 1, p. 4; am. 1965, ch. 124, § 1, p. 250.]

33-3705. Accumulation of dining hall funds to be remitted to state treasury. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1943, ch. 3, § 2, p. 4, was repealed by S.L. 1965, ch. 124, § 2.

33-3706. Permanent revolving funds for operation of dining halls. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1943, ch. 3, § 3, p. 4; am. 1947, ch. 99, § 12, p. 182; am. 1947, ch. 100, § 11, p. 190; am. 1947, ch. 107, § 10, p. 217; am. 1963, ch. 286, § 2, p. 752, was repealed by S.L. 1965, ch. 124, § 3.

33-3707. Receipts used in operation of dining halls. — The receipts of said dining halls shall be used and utilized by said institutions in the operation of said dining halls; and any net profits may be disbursed upon the authority of the board of trustees for the payment of interest or principal of any revenue bonds issued by the institution under the authority of chapter 38, title 33, Idaho Code. Provided further that a reasonable reserve to be determined by the state board of education, acting as board of trustees, is hereby created for replacement of dining hall equipment. [1943, ch. 3, § 4, p. 4; am. 1963, ch. 286, § 3, p. 752; am. 1965, ch. 124, § 4, p. 250.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1963, ch. 286, provided that the act should take effect on and after July 1, 1963.

33-3708. Dining halls not operated for profit. — Such dining halls shall never be operated for any commercial purpose, but shall be used for the benefit of such educational institutions, their faculties, students and officers as nearly as may be, in the sound discretion of the state board of education with the object of making available wholesome food at the most reasonable cost to the students, officers and faculties. [1943, ch. 3, § 5, p. 4; am. 1965, ch. 124, § 5, p. 250.]

**33-3709. Excess dining hall funds to be remitted to general fund.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1943, ch. 3, § 6, p. 4, was repealed by S.L. 1965, ch. 124, § 6.

33-3710. Uniform system of accounting for dining hall funds. — The state board of education in its capacities as trustees of the several educational institutions, shall, by provisions uniform in all such institutions, establish such system of accounting, expenditure and reimbursement of such revolving fund as may be appropriate and as may be ordered by the state controller. [1943, ch. 3, § 7, p. 4; am. 1994, ch. 180, § 52, p. 420.]

STATUTORY NOTES

Cross References. — State controller, § 67-1001 et seq.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment

to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller." Since such amendment was adopted, the amendment to this section by § 52 of S.L. 1994, ch. 180 became effective January 2, 1995.

33-3711. Liability of state for dining halls limited. — Nothing in sections 33-3704 — 33-3711 shall be construed to create or to impose upon the state any liability whatever beyond payment to such institutions of the sums herein appropriated. [1943, ch. 3, § 8, p. 4.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 1943, ch. 3 declared an emergency and provided that the act should become effective on its

passage and approval. Approved Jan. 22, 1943.

33-3712. Office of bursar a public office — Duties and bond of bursar. — The office of bursar at state educational institutions is declared a public office and the state board of education in its capacity as boards of trustees for the several state educational institutions is empowered to fix the duties of bursars and in its discretion fix the amount of the bond to be given by such bursars as such officers. In the performance of his duties each bursar shall be supervised as the state board of education and board of regents may direct. [1943, ch. 73, § 1, p. 155; am. 1971, ch. 106, § 1, p. 227.]

STATUTORY NOTES

Compiler's Notes. — S.L. 1943, ch. 73 carried a preamble which read: "Whereas bursars are and necessarily have been appointed for proper administration of affairs of state educational institutions, but there has

been no legal definement of the status of such bursars by legislative enactment, such definement is declared requisite to orderly government."

33-3713. Bursars as fiscal officers — Duty to make reports. — Subject to the control of the state board of education in its capacities as boards of trustees for the said institutions severally, the bursars shall be deemed fiscal officers of such institutions, and whenever by any law or grant any such institution is required to make reports in financial matters, or make remittances of funds, or shall receive funds or property, unless otherwise provided by law the bursar shall make such reports and remittances and receive such funds or property. [1943, ch. 73, § 2, p. 155.]

STATUTORY NOTES

Cross References. — Authority and duties of bursars of state educational institutions, § 67-2025.

33-3714. Acceptance of gifts, legacies and devises. — The board of regents of the University of Idaho and the state board of education are hereby authorized in the name of any state educational institution and on behalf of the state, to accept gifts, legacies and devises of property to the state for the use and benefit of any of the state educational institutions. [1933, ch. 127, § 1, p. 196.]

33-3715. Interference with conduct of institutions of higher learning — Legislative intent. — The legislature, in recognition of unlawful campus disorders across the nation which are disruptive of the educational process and dangerous to the health and safety of persons and damaging to public and private property, establishes by this act criminal penalties for conduct declared in this act to be unlawful. However, this act shall not be construed as preventing institutions of higher education from establishing standards of conduct, scholastic and behavioral, reasonably relevant to their lawful missions, processes, and functions, and to invoke appropriate discipline for violations of such standards. [1969, ch. 223, § 1, p. 729.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1969, chapter 223 which is compiled as §§ 33-3715 and 33-3716.

RESEARCH REFERENCES

A.L.R. — Participation of student in demonstration on or near campus as warranting imposition or criminal liability for breach of peace disorderly conduct trespass, unlawful assembly, or similar offense. 32 A.L.R.3d 551.

Participation of student in demonstration

on or near campus as warranting expulsion or suspension from school or college. 32 A.L.R.3d 864.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 A.L.R.3d 330.

33-3716. Unlawful conduct — Penalty. — (1) No person shall, on the campus of any community college, junior college, college, or university in this state, hereinafter referred to as "institutions of higher education," or at

or in any building or other facility owned, operated, or controlled by the governing board of any such institution of higher education, willfully deny to students, school officials, employees, and invitees:

- (a) lawful freedom of movement on the campus;
- (b) lawful use of property, facilities, or parts of any institution of higher education; or
- (c) the right of lawful ingress and egress to the institution's physical facilities.

(2) No person shall, on the campus of any institution of higher education, or at or in any building or other facility owned, operated, or controlled by the governing board of any such institution, willfully impede the staff or faculty of such institution in the lawful performance of their duties, or willfully impede a student of such institution in the lawful pursuit of his educational activities, through the use of restraint, abduction, coercion, or intimidation, or when force and violence are present or threatened.

(3) No person shall willfully refuse or fail to leave the property of, or any building or other facility owned, operated, or controlled by the governing board of any such institution of higher education upon being requested to do so by the chief administrative officer, his designee charged with maintaining order on the campus and in its facilities, or a dean of such college or university, if such person is committing, threatens to commit, or incites others to commit, any act which would disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions of the institution.

(4) Nothing in this section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an institution of higher education and its employees.

(5) Any person who violates any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500), or imprisoned in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. [1969, ch. 223, § 2, p. 729.]

STATUTORY NOTES

Compiler's Notes. — Section 4 of S.L. 1969, ch. 223 read: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are

declared to be severable."

Effective Dates. — Section 3 of S.L. 1969, ch. 223 provided that this act should take effect on the first day of the first month following its passage, and should apply only to violations of the act alleged to have occurred on or after such date. Approved March 21, 1969.

RESEARCH REFERENCES

A.L.R. — Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful

assembly, or similar offense. 32 A.L.R.3d 551.

Participation of student in demonstration on or near campus as warranting expulsion or

suspension from school or college. 32 A.L.R.3d 864.

33-3717. Fees at the university of Idaho. — (1) The state board of education and the board of regents of the university of Idaho may prescribe fees, but not tuition, for all full-time, resident students enrolled in the university of Idaho.

(2) The state board of education and the board of regents of the university of Idaho may prescribe tuition for:

(a) Nonresident students enrolled in the university of Idaho; or

(b) Resident students enrolled in the university of Idaho who are:

(i) In a professional program, college, school or department approved by the state board of education and the board of regents of the university of Idaho;

(ii) Taking extra studies; or

(iii) Part-time students at the institution.

(3) For purposes of this section, tuition shall be defined as payment for the cost of instruction.

(4) Fees which may be prescribed under this section include matriculation fees, defined as the fees charged to students for all educational costs other than the cost of instruction including, but not limited to, costs associated with the construction, maintenance and operation of buildings and facilities, student services, and institutional support, which are complementary to, but not a part of, the instructional program. The state board of education and the board of regents of the university of Idaho also may prescribe fees for all students for any additional charges, other than payment for the cost of instruction, that are necessary for the proper operation of the institution.

(5) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(6) Nothing contained in this section shall prevent the state board of education and the board of regents of the university of Idaho from waiving fees or tuition to be paid by nonresident students, as defined in section 33-3717C, Idaho Code, who are enrolled in the university of Idaho. [I.C., § 33-3717, as added by 2005, ch. 210, § 2, p. 626.]

STATUTORY NOTES

Prior Laws. — Former § 33-3717, which comprised I.C., § 33-3717, as added by 1970, ch. 226, § 1, p. 634; am. 1974, ch. 83, § 1, p. 1173; am. 1978, ch. 22, § 1, p. 43; am. 1979, ch. 73, § 1, p. 182; am. 1981, ch. 333, § 1, p.

695; am. 1986, ch. 34, § 1, p. 106; am. 1987, ch. 50, § 1, p. 81; am. 1989, ch. 108, § 1, p. 248; am. 1992, ch. 119, § 1, p. 394; am. 1994, ch. 140, § 1, p. 312, was repealed by S.L. 2005, ch. 210, § 1.

33-3717A. Fees at state colleges and universities other than the university of Idaho. — (1) The state board of education may prescribe fees, including tuition fees, for resident and nonresident students enrolled in all state colleges and universities other than the university of Idaho. For purposes of this section, said fees, including tuition fees, may be used for any

and all educational costs at the state colleges and universities including, but not limited to, costs associated with:

- (a) Academic services;
- (b) Instruction;
- (c) The construction, maintenance and operation of buildings and facilities;
- (d) Student services; or
- (e) Institutional support.

The state board of education also may prescribe fees for all students for any additional charges that are necessary for the proper operation of each institution.

(2) A resident student is a student who meets the residency requirements imposed by section 33-3717B, Idaho Code.

(3) Nothing contained in this section shall prevent the state board of education from waiving fees, including tuition fees, to be paid by nonresident students, as defined in section 33-3717C, Idaho Code, who are enrolled in the state colleges and universities.

(4) Nothing contained in this section shall apply to community colleges now or hereafter established pursuant to chapter 21, title 33, Idaho Code, or to postsecondary professional-technical schools now or hereafter established and not connected to or a part of a state college or university. [I.C., § 33-3717A, as added by 2005, ch. 210, § 3, p. 626.]

STATUTORY NOTES

Compiler's Notes. — Former § 33-3717A was amended and redesignated as § 33-3717C by § 5 of S.L. 2005, ch. 210.

33-3717B. Residency requirements. — (1) For any public institution of higher education in Idaho, a “resident student” is:

(a) Any student who has one (1) or more parent or parents or court-appointed guardians who are domiciled in the state of Idaho, and the parent, parents or guardians provide at least fifty percent (50%) of the student's support. Domicile, as used in this section, means that individual's true, fixed and permanent home and place of habitation. It is the place where that individual intends to remain, and to which that individual expects to return when that individual leaves without intending to establish a new domicile elsewhere. To qualify under this section, the parent, parents or guardians must have maintained a bona fide domicile in the state of Idaho for at least twelve (12) months prior to the opening day of the term for which the student matriculates.

(b) Any student, who receives less than fifty percent (50%) of the student's support from a parent, parents or legal guardians and who has continuously resided and maintained a bona fide domicile in the state of Idaho primarily for purposes other than educational for twelve (12) months next preceding the opening day of the term during which the student proposes to attend the college or university.

(c) Subject to subsection (2) of this section, any student who is a graduate of an accredited secondary school in the state of Idaho, and who matriculates at a college or university in the state of Idaho during the term immediately following such graduation regardless of the residence of the student's parent or guardian.

(d) The spouse of a person who is classified, or is eligible for classification, as a resident of the state of Idaho for the purposes of attending a college or university.

(e) A member of the armed forces of the United States, stationed in the state of Idaho on military orders.

(f) An officer or an enlisted member of the Idaho national guard.

(g) A student whose parent or guardian is a member of the armed forces and stationed in the state of Idaho on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose that residence when the student's parent or guardian is transferred on military orders.

(h) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state of Idaho within one (1) year of the date of separation.

(i) Any individual who has been domiciled in the state of Idaho, has qualified and would otherwise be qualified under the provisions of this statute and who is away from the state for a period of less than thirty (30) months and has not established legal residence elsewhere provided a twelve (12) month period of continuous residence has been established immediately prior to departure.

(j) A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (i) Coeur d'Alene tribe; (ii) Shoshone-Paiute tribes; (iii) Nez Perce tribe; (iv) Shoshone-Bannock tribes; (v) Kootenai tribe.

(2) A "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of subsection (1) of this section, and shall include:

(a) A student attending an institution in this state with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided.

(b) A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or does not hold "refugee-parolee" or "conditional entrant" status with the United States immigration and naturalization service or is not otherwise permanently

residing in the United States under color of the law and who does not also meet and comply with all applicable requirements of this section.

(3) The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Idaho. A student who is enrolled for more than eight (8) hours in any semester or quarter during a twelve (12) month period shall be presumed to be in Idaho for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile in this state unless the student proves, in fact, establishment of a bona fide domicile in this state primarily for purposes other than educational. Institutions determining whether a student is domiciled in the state of Idaho primarily for purposes other than educational shall consider, but shall not be limited to, the following factors:

(a) Any of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, proves the establishment and maintenance of domicile in Idaho for purposes other than educational and supports classification of a student as an Idaho resident:

- (i) Filing of Idaho state income tax returns covering a period of at least twelve (12) months before the term in which the student proposes to enroll as a resident student;
- (ii) Permanent full-time employment or the hourly equivalent thereof in the state of Idaho; or
- (iii) Ownership by the student of the student's living quarters.

(b) The following, if done for at least twelve (12) months before the term in which the student proposes to enroll as a resident student, lend support to domiciliary intent and the absence of which indicates a lack of domiciliary intent. By themselves, the following do not constitute sufficient evidence of the establishment and maintenance of a domicile in Idaho for purposes other than educational:

- (i) Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer or other item of personal property for which state registration and the payment of a state tax or fee is required;
- (ii) Registration to vote for state elected officials in Idaho at a general election;
- (iii) Holding an Idaho driver's license;
- (iv) Evidence of abandonment of a previous domicile;
- (v) Presence of household goods in Idaho;
- (vi) Establishment of accounts with Idaho financial institutions; and
- (vii) Other similar factors indicating intent to be domiciled in Idaho and the maintenance of such domicile.

(4) The state board of education and the board of regents of the university of Idaho shall adopt uniform and standard rules applicable to all state colleges and universities now or hereafter established to determine resident status of any student and to establish procedures for review of that status.

(5) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected college or university is located; an appeal from the district court shall lie as in all civil actions.

(6) Nothing contained herein shall prevent the state board of education and the board of regents of the university of Idaho from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of higher education.

(7) For students who apply for special graduate and professional programs including, but not limited to, the WWAMI (Washington, Wyoming, Alaska, Montana, Idaho) regional medical program, the WICHE student exchange programs, Creighton university school of dental science, the university of Utah college of medicine, and the Washington, Oregon, Idaho (WOI) regional program in veterinary medical education, no applicant shall be certified or otherwise designated as a beneficiary of such special program who has not been a resident of the state of Idaho for at least one (1) calendar year previous to the application date. [I.C., § 33-3717B, as added by 2005, ch. 210, § 4, p. 626; am. 2008, ch. 66, § 2, p. 170; am. 2008, ch. 226, § 1, p. 690.]

STATUTORY NOTES

Amendments. — This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 66, added subsection (1)(f) and made related redesignations; and in subsection (7), substi-

tuted “WWAMI” for “WAMI,” and inserted “Wyoming.”

The 2008 amendment, by ch. 226, rewrote the section to the extent that a detailed comparison is impracticable.

33-3717C. Waiving fees or tuition for certain nonresident students. — (1) Notwithstanding any other provision of law the state board of education and the board of regents of the university of Idaho may determine when to grant a full or partial waiver of fees or tuition charged to nonresident students pursuant to reciprocal agreements with other states. In making this determination, the state board of education and the board of regents of the university of Idaho shall consider the potential of the waiver to:

- (a) Enhance educational opportunities for Idaho residents;
- (b) Promote mutually beneficial cooperation and development of Idaho communities and nearby communities in neighboring states;
- (c) Contribute to the quality of educational programs; and
- (d) Assist in maintaining the cost effectiveness of auxiliary operations in Idaho institutions of higher education.

(2) Consistent with the determinations made pursuant to subsection (1) hereof, the state board of education and the board of regents of the university of Idaho may enter into agreements with other states to provide for a full or partial reciprocal waiver of fees or tuition charged to students. Each agreement shall provide for the numbers and identifying criteria of

students, and shall specify the institutions of higher education that will be affected by the agreement.

(3) The state board of education and the board of regents of the university of Idaho shall establish policy guidelines for the administration by the affected Idaho institutions of any tuition waivers authorized under this section, for evaluating applicants for such waivers, and for reporting the results of the reciprocal waiver programs authorized in this section.

(4) A report and financial analysis of any waivers authorized under this section shall be submitted annually to the legislature as part of the budget recommendations of the state board of education and the board of regents of the university of Idaho for the system of higher education in this state. [I.C., § 33-3717A, as added by 1982, ch. 256, § 1, p. 667; am. 1986, ch. 32, § 1, p. 103; am. and redesign. 2005, ch. 210, § 5, p. 626.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 33-3717A.

For Western Interstate Commission for Higher Education Student Exchange Programs, see <http://www.wiche.edu/sep/>.

For information on the Creighton University dental program, see <http://www.isu.edu/academic-info/current/Health/DentScience.html>.

For information on cooperative program with the University of Utah school of medicine, see <http://www.isu.edu/academic-info/current/arts.html>.

For information on the ISU program in veterinary medicine, see <http://www.isu.edu/itrc/nosearch/edwin/hpac/HPAC/veterinary.shtml>.

33-3718. Additional charges authorized in the collection of debts — Public and private institutions of higher education. — Each state public or private institution of higher education may, in the control and collection of any debt or claim due and owing to it, impose reasonable financing and late charges, as well as reasonable costs and expenses incurred in the collection of such debts, if provided for in the note or agreement signed by the debtor. [I.C., § 33-3718, as added by 1980, ch. 141, § 1, p. 306.]

33-3719. Student called to active duty. — Whenever any active member of the Idaho national guard is called or ordered by the governor to state active duty for thirty (30) consecutive days or more, or to duty other than for training pursuant to title 32, U.S.C., or called or ordered by competent federal authority into active federal service under title 10, U.S.C., for duty other than for training for thirty (30) consecutive days or more, or whenever a member of any reserve United States military force is ordered to said active federal service, an educational institution in this state in which the member is enrolled shall grant the member military leave of absence from his education. Individuals on military leave of absence from their educational institution, upon release from military duty, shall be restored to the educational status they had attained prior to their being ordered to military duty without loss of academic credits earned, scholarships or grants awarded, or tuition and other fees paid prior to the commencement of the military duty. It shall be the duty of the educational institution to refund tuition or fees or to credit the tuition, scholarships,

grants and fees to the next academic semester or term after the termination of the educational military leave of absence at the option of the student. [I.C., § 33-3719, as added by 2003, ch. 251, § 3, p. 650; am. 2004, ch. 60, § 1, p. 278; am. 2007, ch. 108, § 2, p. 313.]

STATUTORY NOTES

Prior Laws. — Former § 33-3719, which comprised I.C., § 33-719, as added by 1981, ch. 120, § 1, p. 206; am. 1994, ch. 180, § 53, p. 420, was repealed by S.L. 1999, ch. 196, § 1, effective July 1, 1999.

Amendments. — The 2007 amendment, by ch. 108, inserted “or whenever a member of any reserve United States military force is ordered to said active federal service” in the first sentence.

Effective Dates. — Section 5 of S.L. 2003, ch. 251 provided: “An emergency existing

therefor, which emergency is hereby declared to exist, this act shall be in full force and effect when the Governor enters an order, and files it with the Secretary of State, calling or ordering members of the Idaho National Guard to state active duty or to Title 32 U.S.C. duty other than for training as defined in Section 1 of this act, or on July 1, 2003, whichever occurs first.”

Section 2 of S.L. 2004, ch. 60 declared an emergency. Approved March 16, 2004.

33-3720. Professional studies program. — (1) It is hereby declared that it is in the public interest to assist Idaho citizens who wish to pursue professional studies in the fields of medicine, dentistry, veterinary medicine, and other health-related areas of study which are not available within the state by (a) entering into compacts or contractual agreements which make such courses of study available to Idaho citizens, and (b) providing a mechanism to provide funds for such Idaho citizens.

(2) The state board of education is hereby authorized to enter into loan agreements with qualified recipients to participate in qualified programs, which agreements shall include provisions for repayment of the loan on terms agreed to by the board and the qualified recipient; such repayment agreements may include provisions for decreasing or delaying or forgiving the repayment obligation in relationship to the recipient’s course of study or agreement to return to Idaho to practice professionally.

(a) A qualified recipient shall be any Idaho student accepted into a qualified program who meets the residency requirements imposed by section 33-3717B, Idaho Code, and the rules of the state board of education.

(b) A qualified program shall be a program enumerated in section 33-3717B(7), Idaho Code, and any other medical, dental, veterinary medicine, or other health-related program in which participation by Idaho residents has been authorized by the legislature and for which funds have been obligated by the board pursuant to subsection (3) of this section.

(3) The state board of education is hereby authorized to transfer, distribute or pay such moneys as are available in the professional studies account to the school, program, or compact providing the course of study pursuant to contracts, agreements, or compacts entered into by the legislature or the state board of education.

(4) The state board of education is hereby authorized to adopt all necessary rules, subject to the provisions of chapter 52, title 67, Idaho Code, for the administration of the professional studies program. [I.C., § 33-3720, as added by 1983, ch. 182, § 1, p. 494; am. 2005, ch. 210, § 6, p. 626.]

STATUTORY NOTES

Cross References. — Professional studies account, § 33-3721.

Effective Dates. — Section 3 of S.L. 1983, ch. 182 declared an emergency and provided that subsection (4) of this section should be-

come effective May 1, 1983 and further provided that subsections (1) through (3) of this section should be in full force and effect on and after July 1, 1984. Approved April 9, 1983.

OPINIONS OF ATTORNEY GENERAL

The service pay back portion of the proposed rules which are to implement the Professional Studies Program and Account, this

section and § 33-3721, do not constitute illegal servitude. OAG 84-1.

33-3721. Professional studies account. — (1) There is hereby created in the dedicated fund, the professional studies account. The professional studies account shall be used to receive moneys from state appropriations, from private contributions, from gifts and grants, from repayment of loans, and from any other source, in support of medical, dental, veterinary, or other health-related professional programs of study.

(2) Interest earned on investments from moneys in the account shall be paid to the account.

(3) All moneys in the account are hereby appropriated to the state board of education for the purposes of section 33-3720, Idaho Code. [I.C., § 33-3721, as added by 1983, ch. 182, § 2, p. 494.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1983, ch. 182 read: "(1) An emergency existing therefor, which emergency is hereby declared to exist, the provisions of sections 33-3720(4) and 33-3721, Idaho Code, shall be in full force

and effect on and after May 1, 1983.

"(2) The provisions of subsections (1) through (3) of section 33-3720, Idaho Code, shall be in full force and effect on and after July 1, 1984." Approved April 9, 1983.

OPINIONS OF ATTORNEY GENERAL

The service pay back portion of the proposed rules which are to implement the Professional Studies Program and Account, § 33-

3720 and this section, do not constitute illegal servitude. OAG 84-1.

33-3722. Student education incentive loan forgiveness contract. — (1) It is hereby declared that it is in the public interest to encourage and assist individuals who wish to pursue a teaching career or professional nursing career within this state to enroll in an Idaho postsecondary institution and to work in Idaho.

(2) Any Idaho student pursuing a teaching career may sign a loan forgiveness contract and promissory note for payment of all full-time undergraduate matriculation, facility and activity fees at any Idaho institution of higher learning who:

(a) Will maintain full-time student status and shall maintain a grade point average of 3.0 or better in the first two (2) semesters and for the remaining semesters; and

- (b) Will pursue a program of study which will qualify the student to receive an Idaho teaching certificate upon completion of his studies; and
- (c) Will pursue a teaching career within the state of Idaho for a minimum of two (2) years, which time requirement will commence upon obtaining a teaching position.

(3) Any Idaho student pursuing a licensed nursing career may sign a loan forgiveness contract and promissory note for payment of all undergraduate matriculation, facility and activity fees at any Idaho institution of higher learning who:

- (a) Will maintain full-time student status and shall maintain a grade point average of 3.0 or better in the first two (2) semesters and for the remaining semesters; and
- (b) Will pursue a program of study which will qualify the student to write the licensure examination approved by the board of nursing for registered nurse upon completion of his studies; and
- (c) Will pursue a licensed professional nursing career within the state of Idaho for a minimum of two (2) years, which time requirement will commence within one (1) year after a professional nursing license is obtained.

(4) Availability of student education incentive loan forgiveness contracts for potential teachers will be limited to sixteen (16) each year, with three (3) to be let by the University of Idaho, three (3) by Boise State University, three (3) by Idaho State University, three (3) by Lewis Clark State College, two (2) by North Idaho College and two (2) by the College of Southern Idaho; for potential registered nurses, contracts will be limited to thirteen (13) each year, with three (3) to be let by Boise State University, three (3) by Idaho State University, three (3) by Lewis Clark State College, two (2) by North Idaho College and two (2) by the College of Southern Idaho.

(a) Preference in selecting potential registered nurses will be given to applicants who indicate willingness to practice in rural Idaho.

(b) The length of each contract and promissory note shall not exceed a maximum of eight (8) years, and the beginning date and expiration date shall be specified in each contract.

(5) The state board of education may reassign unused contracts to other participating institutions. For purposes of reassignment of unused contracts, Eastern Idaho Technical College may be considered as a participating institution and may be awarded student education incentive loan forgiveness contracts for potential registered nurses.

(6) The student loan office of each institution of higher learning is directed to administer the loan forgiveness program provisions of this section, including the supplying of all necessary forms and the verifying, before each registration and at the expiration of the contract, of each person's compliance with the terms of the contract and collect and account for any necessary repayment of funds. Upon successful completion of the terms of the contract, the promissory note shall be forgiven. The state board of education shall annually determine the interest rate for new promissory notes. Loan repayments shall be allocated to support new student education incentive loan forgiveness contracts.

(7) Any violation of the terms of the contract shall obligate the person to repay all fees which the person as a student was allowed to waive, as determined by the affected institution.

(8) Each affected institution shall in its preparation of future budgets include therein costs resultant from fee loss for reimbursement from appropriations of state funds. [I.C., § 33-3722, as added by 1988, ch. 309, § 1, p. 965; am. 1989, ch. 118, § 1, p. 264; am. 1990, ch. 28, § 1, p. 42; am. 2005, ch. 173, § 1, p. 535.]

33-3723. Rural physician incentive fee assessment. — The state board of education may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to four percent (4%) of the annual average medicine support fee paid by the state. The fee must be assessed by the board and deposited in the rural physician incentive fund established in section 33-3724, Idaho Code. [I.C., § 33-3723, as added by 2003, ch. 283, § 1, p. 767.]

STATUTORY NOTES

Cross References. — Intestate agreements for study of medicine, § 33-3717B.

33-3724. Rural physician incentive fund. — There is hereby created the rural physician incentive fund in the state treasury. Money is payable into the fund as provided in section 33-3723, Idaho Code. Income and earnings on the fund shall be returned to the fund. The state board of education shall administer the fund as provided by section 33-3725, Idaho Code. The state board of education shall identify an oversight committee made up of knowledgeable individuals or organizations to assist in the administration of this fund. Members of this oversight committee should come from the Idaho hospital association, Idaho medical association, office of rural health, Idaho rural health education center, medical student program administrators and others as appropriate. [I.C., § 33-3724, as added by 2003, ch. 283, § 2, p. 767.]

33-3725. Incentive payments from fund. — The moneys in the rural physician incentive fund are hereby appropriated for the uses of the fund. The state board of education may use the moneys to pay:

(1) The educational debts of rural physicians who practice primary care medicine in medically underserved areas of the state that demonstrate a need for assistance in physician recruitment; and

(2) The expenses of administering the rural physician incentive program. The expenses of administering the program shall not exceed ten percent (10%) of the annual fees assessed pursuant to section 33-3723, Idaho Code.

The board, through the oversight committee, shall establish procedures for determining the areas of the state that qualify for assistance in physician

recruitment. An eligible area must demonstrate that a physician shortage exists or that the area has been unsuccessful in recruiting physicians by other mechanisms.

A physician from an area determined to be eligible under this section may apply to the board for payment of an educational debt directly related to a professional school. Physicians who have paid the fee authorized in section 33-3723, Idaho Code, shall be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area during the contract period.

The maximum amount of educational debt payment that a rural physician may receive is fifty thousand dollars (\$50,000) over a five (5) year period. The board may structure the payment schedule to make greater payments in the later years. The amount contractually committed in a year shall not exceed the annual amount deposited in the rural physician incentive fund. [I.C., § 33-3725, as added by 2003, ch. 283, § 3, p. 767.]

CHAPTER 38

STATE INSTITUTIONS OF HIGHER EDUCATION BOND ACT

SECTION.

- 33-3801. Short title.
- 33-3802. Definitions.
- 33-3803. State educational institutions as bodies politic and corporate — Powers of boards.
- 33-3804. Powers and duties of state institutions.
- 33-3805. Authorization, issuance, maturity, interest and sale of bonds.
- 33-3805A. [Repealed.]
- 33-3806. Provisions for payment of bonds.

SECTION.

- 33-3807. Deposit of proceeds of bonds.
- 33-3808. Validity of bonds.
- 33-3809. Other funds not affected.
- 33-3810. Bonds and other debt not obligations of state — Payable only from pledged revenue.
- 33-3811. Attorney general to pass on validity of bonds — Incontestable if approved.
- 33-3812. Separability.
- 33-3813. Construction of act.

33-3801. Short title. — This act may be cited as “The Educational Institutions Act of 1935.” [1935 (1st E.S.), ch. 55, § 1, p. 145.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1935 (1st E.S.), chapter 55, which is compiled as §§ 33-3801 — 33-3813.

JUDICIAL DECISIONS

Constitutionality of Appropriation.

Session Laws 1955, ch. 277, appropriating the sum of \$100,000 to apply on dormitory revenue bond issue of \$375,000 issued by board of trustees of Northern Idaho College of Education (now Lewis-Clark State College) in 1950, under provisions of educational bond act, although since college had been closed since 1951 due to failure of legislature to appropriate funds, was not unconstitutional

on the ground that it was the attempt to loan the credit of the state of Idaho for a private purpose, since it was designed and intended for a public purpose, to wit payment of a college building in furtherance of educational objectives of the state. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

Session Laws 1955, ch. 277, which appropriate the sum of \$100,000 to apply on 1950 dormitory revenue bond issue of Northern

Idaho College of Education (now Lewis-Clark State College) was not unconstitutional on the ground that the act required the state treasurer to disburse funds without examination by state board of examiners of a claim against the state, since the prior bond issue

was not a claim against the state prior to enactment of act, and none exists or can come into existence against the state by reason of the enactment. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

33-3802. Definitions. — The following terms, wherever used or referred to in this act, shall have the following meaning unless a different meaning clearly appears from the context:

(a) The term "institution" shall mean any institution named in section 2 [3, section 33-3803, Idaho Code];

(b) The term "board" shall mean the state board of education, board of regents, board of trustees or other governing body, by whatever name known, of an institution;

(c) The term "bonds" shall mean any bonds of an institution issued pursuant to this act;

(d) The term "project" shall mean and include buildings, structures, improvements, and equipment of every kind, nature and description, which may be required by or convenient for the purposes of an institution, including, without limiting the generality of the foregoing, administration, dining, exhibition, lecture, recreational and teaching halls, or parts thereof, or additions thereto; heat, light, sewer and water works plants or systems, or parts thereof, or extensions thereto; commons, dining halls, dormitories, auditoriums, libraries, infirmaries, laundries, laboratories, metallurgical plants, museums, swimming pools, water-towers, fire prevention and fire fighting systems, gymnasias, stadia, dwellings, green houses, farm buildings, and stables, or parts thereof, or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof;

(e) The term "to acquire" shall include to purchase, to erect, to build, to construct, to reconstruct, to repair, to replace, to extend, to better, to equip, to develop, to improve, and to embellish a project;

(f) The term "Recovery Act" shall mean the act of the Congress of the United States of America, approved June 16, 1933, entitled: "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes," and Acts amendatory thereof and Acts supplemental thereto, and revisions thereof, and any further Acts or Joint Resolutions of the Congress of the United States to encourage public works or to reduce unemployment or for work relief;

(g) The term "federal agency" shall mean the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works, or such other agency or agencies as may be designated or created to make loans or grants. [1935 (1st E.S.), ch. 55, § 2, p. 145.]

STATUTORY NOTES

Cross References. — Bursar at state educational institutions, §§ 33-3712 and 33-3713.

Contracts for housing facilities at state educational institutions, § 33-3701.

Dining halls, § 33-3704 et seq.

Dormitory fund, § 33-3702.

Federal References. — The Recovery Act of June 16, 1933, referred to in paragraph (f) of this section, was declared unconstitutional in *A.L.A. Schechter Poultry Corp. v. United*

States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570 (1935).

Compiler's Notes. — The reference to "section 2" in paragraph (a) of this section was apparently intended as a reference to section 3 of S.L. 1935 (1st E.S.), chapter 55, and that section, as compiled as § 33-3803, has been inserted in brackets by the compiler.

For words "this act," see Compiler's Notes, § 33-3801.

JUDICIAL DECISIONS

Sovereign Immunity.

Neither the state nor the state board of education can plead sovereign immunity as a defense in a suit by the plaintiff to quiet title to land owned by him in which the board

claimed some interest. *Lyon v. State*, 76 Idaho 374, 283 P.2d 1105 (1955).

Cited in: *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

33-3803. State educational institutions as bodies politic and corporate — Powers of boards. — Each of the following institutions is hereby constituted and confirmed a body politic and corporate and a separate and independent legal entity and is hereby further constituted and confirmed as a governmental instrumentality for the dissemination of knowledge and learning: "The Regents of the University of Idaho," "Lewis-Clark State College," "Idaho State University," and "Boise State University." A corporate purpose of every institution, in addition to any other purposes thereof, shall be to acquire any project. The powers of every institution delegated to it by this act shall be vested in and exercised by a majority of all the members of its board, and a majority of all the members of such board shall be a quorum for the transaction of any business authorized by this act, but a lesser number may adjourn and compel the attendance of absent members. [1935 (1st E.S.), ch. 55, § 3, p. 145; am. 1969, ch. 94, § 1, p. 324.]

STATUTORY NOTES

Compiler's Notes. — The words "Lewis-Clark State College" were substituted for "Lewis-Clark Normal School" on authority of S.L. 1971, ch. 44, § 9 which is compiled as § 33-3116.

The words "Boise State University" were substituted for "Boise State College" on authority of S.L. 1974, ch. 25, § 3 which is compiled as § 33-4007.

For words "this act," see Compiler's Notes, § 33-3801.

Section 3 of S.L. 1969, ch. 94 read: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable."

Effective Dates. — Section 4 of S.L. 1969, ch. 94 declared an emergency. Approved March 7, 1969.

JUDICIAL DECISIONS

Immunity from Suit.

The state did not waive its Eleventh Amendment immunity as to the state university by § 33-3003 and this section. *Ferguson*

v. Greater Pocatello Chamber of Commerce, Inc., 647 F. Supp. 190 (D. Idaho 1985), *aff'd*, 848 F.2d 976 (9th Cir. 1988).

The power of the University of Idaho to sue

or be sued is not a waiver of its eleventh amendment immunity. *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988).

Cited in: *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

33-3804. Powers and duties of state institutions. — Every institution shall have power in its proper name as aforesaid:

- (a) To have a corporate seal and alter the same at pleasure;
- (b) To sue and be sued;
- (c) To acquire by purchase, gift or the exercise of the right of eminent domain and hold and dispose of real or personal property or rights or interests therein and water rights;
- (d) To make contracts and to execute all instruments necessary or convenient;
- (e) To acquire any project or projects, and to own, operate, and maintain such project;
- (f) To accept grants of money or materials or property of any kind from a federal agency, upon such terms and conditions as such federal agency may impose;
- (g) To borrow money, with or without the issuance of bonds and to provide for the payment of the same and for the rights of the holders of such bonds and/or of any other instrument of such indebtedness, including the power to fix the maximum rate of interest to be paid thereon and to warrant and indemnify the validity and tax exempt character;
- (h) To perform all acts and do all things necessary or convenient to carry out the powers herein granted, to obtain loans or grants or both from any federal agency, and to accomplish the purposes of sections 33-3801 — 33-3813, Idaho Code, and secure the benefits of the Recovery Act;
- (i) To issue refunding bonds, for the purpose of paying, redeeming, or refunding any outstanding bonds theretofore issued under authority of this chapter. Refunding bonds so issued shall have such details, shall bear such rate or rates of interest and shall be otherwise issued and secured as provided by the board authorizing the issuance of such bonds and as otherwise provided in this chapter, provided, however, that such changes in the security and revenues pledged to the payment thereof may be made by such board as may be provided by it in the proceedings authorizing such bonds, but in no event shall such refunding bonds ever be secured by revenues not authorized by this chapter to be pledged to the payment of bonds issued for other than refunding purposes. Refunding bonds issued hereunder may be exchanged for a like principal amount of the bonds to be refunded, may be sold in the manner provided in this chapter for the sale of other bonds, or may be exchanged in part and sold in part. If sold, the proceeds of such bonds may be deposited in escrow for the payment of the bonds to be refunded, provided such bonds mature or are callable for redemption under their terms within six (6) months from the date of the delivery of the refunding bonds. No refunding bonds may be issued hereunder in a principal amount in excess of the principal amount of the bonds to be refunded nor may any bonds not maturing or callable for redemption under their terms as above provided be refunded hereunder without the consent of the holders thereof. Refunding bonds so authorized and issued

may in the discretion of the board be combined with other bonds to be authorized and issued under this chapter, and a single issue of bonds may be so authorized in part for improvement and in part for refunding purposes.

(j) In connection with borrowing without the issuance of bonds, to fix fees, rents or other charges for utilization of any facility or project being financed by said borrowing and to pledge the same, together with any other revenue from such project or facility, as collateral for repayment of principal and interest in the same manner and to the same extent as provided in this chapter for securing the payment of bonds issued pursuant to this chapter. [1935 (1st E.S.), ch. 55, § 4, p. 145; am. 1941, ch. 154, § 1, p. 308; am. 1965, ch. 37, § 1, p. 59; am. 1975, ch. 118, § 1, p. 246.]

STATUTORY NOTES

Federal References. — The Recovery Act, referred to in paragraph (h), was declared unconstitutional. See Compiler's Notes, § 33-3802.

JUDICIAL DECISIONS

Immunity from Suit.

The power of the University of Idaho to sue or be sued is not a waiver of its eleventh

amendment immunity. *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988).

RESEARCH REFERENCES

A.L.R. — Revenue bonds: validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private religious-affiliated colleges or universities. 95 A.L.R.3d 1000.

33-3805. Authorization, issuance, maturity, interest and sale of bonds. — When the board shall find the proposed project or projects to be necessary for the proper operation of the institution and economically feasible and such finding is recorded in its minutes, the bonds therefor shall be authorized by resolution of the board. The bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding forty (40) years from the respective dates thereof, may mature in such amount or amounts, may bear interest, at such rate or rates to be determined by the board, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds may be sold at a public or private sale at not less than par and accrued interest, in a manner to be provided by the board. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code. [1935 (1st E.S.), ch. 55, § 5, p. 145; am. 1953, ch. 90, § 1, p. 120; am. 1965, ch. 37, § 2, p. 59; am. 1967, ch. 272, § 7, p. 745; am. 1970, ch. 28, § 1, p. 54; am. 1979, ch. 47, § 1, p. 136.]

STATUTORY NOTES

Compiler's Notes. — Section 33 of S.L. 1967, ch. 272, read: "Transactions validly entered into before the effective date specified in section 32 and the rights, duties and interest flowing from them remain valid thereafter and may be determined, completed, consummated or enforced as required or permitted by any statute amended by this act as though such amendment had not occurred."

Section 3 of S.L. 1965, ch. 37 read: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can

be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Effective Dates. — Section 2 of S.L. 1953, ch. 90 declared an emergency. Approved March 2, 1953.

Section 4 of S.L. 1965, ch. 37 declared an emergency. Approved February 17, 1965.

Section 32 of S.L. 1967, ch. 272 provided that the act should become effective at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

Section 2 of S.L. 1979, ch. 47 declared an emergency. Approved March 17, 1979.

JUDICIAL DECISIONS

Constitutionality.

Acts 1935, (1st E.S.), ch. 55 authorizing the board of regents of the University of Idaho as a corporation to issue bonds to be amortized over a thirty-year period from revenues accruing from project financed by bond proceeds

does not violate the constitutional limitations on indebtedness of subdivisions of the state, since the board of regents is not within the scope of the constitutional limitation. State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935).

33-3805A. Procedure prior to authorization. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 33-3805A, as added by

1989, ch. 416, § 1, p. 1017, was repealed by S.L. 2008, ch. 161, § 1.

33-3806. Provisions for payment of bonds. — Any institution in connection with the issuance of the bonds or in order to secure the payment of such bonds and interest thereon, shall have power by resolution of its board:

(a) To fix and maintain (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to be served by any project, (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institutions, and from the public in general, for the facilities afforded by such institution (which shall be uniform to all those similarly situated), (3) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, existing buildings, stadia, and other structures at any institution which issues bonds hereunder to acquire a project, which fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by such buildings, stadia and other structures shall be the same as those applicable to any project similar in nature and purpose to such existing buildings, stadia, and other structures; provided, however, that as between such project and the existing buildings at the institution there may

be allowed reasonable differentials based on the condition, type, location and relative convenience of such project and such existing buildings, but such differentials shall be uniform as to all such students or faculty members and others similarly accommodated;

(b) To provide that bonds issued hereunder shall be secured by a first, exclusive and closed lien on the income and revenue derived from, and shall be payable from, (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures, and (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds.

(c) To pledge and assign to, or in trust for the benefit of, the holder or holders of the bonds issued hereunder an amount of the income and revenue derived from (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures, and (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds, which shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor;

(d) To covenant with or for the benefit of the holder or holders of bonds issued hereunder to acquire any project that so long as any such bonds shall remain outstanding and unpaid, such institution will fix, maintain and collect in such installments as may be agreed upon (1) an amount of the fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures which, together with (2) an amount of the matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into

between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds, shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor, and to pay the costs of operation and maintenance of such project, including, but not limited to, reserves for extraordinary repairs, insurance and maintenance, which costs of operation and maintenance shall be determined by the board in its absolute discretion;

(e) To make and enforce and agree to make and enforce parietal rules that shall insure the use of any project by all students in attendance at such institution to the maximum extent to which such project is capable of serving such students, or if such project is designed for occupancy as living quarters for the faculty members, by as many faculty members as may be served thereby;

(f) To covenant that so long as any of the bonds issued hereunder shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined (1) voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the bonds issued hereunder upon any of the income and revenues derived from fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to be served by, any project and any existing buildings, stadia, and other structures, and from matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, or (2) convey or otherwise alienate the project to acquire which such bonds shall have been issued, or the real estate upon which such project shall be located, except at a price sufficient to pay all the bonds then outstanding issued hereunder to acquire such project and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such bonds, or (3) mortgage or otherwise voluntarily create or cause to be created any encumbrance on the project to acquire which such bonds shall have been issued or the real estate upon which it shall be located.

(g) To covenant as to the procedure by which the terms of any contract with a holder or holders of such bonds may be amended or rescinded, the amount or percentage of bonds the holder or holders of which must consent thereto, and the manner in which such consent may be given.

(h) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or

trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(i) To vest in a trustee or trustees or the holder or holders of any specified amount or percentage of bonds the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such bonds, which receiver or receivers may have and be granted such powers and duties as such court may order or decree which powers and duties may include any and all such powers and duties as are usually granted under the laws of the state of Idaho to a receiver or receivers appointed in connection with the foreclosure of a mortgage made by a private corporation.

(j) To make covenants with any federal agency to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the board tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give any institution issuing bonds pursuant to sections 33-3801 — 33-3813, Idaho Code, power to make all covenants, to perform all acts and to do all things, not inconsistent with the constitution of the state of Idaho, in the issuance of the bonds and for their security, including any and all powers granted to a private corporation under the laws of the state of Idaho. [1935 (1st E.S.), ch. 55, § 6, p. 145; am. 1970, ch. 28, § 2, p. 54.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1970, ch. 28 declared an emergency. Approved February 17, 1970.

JUDICIAL DECISIONS

Cited in: Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955).

33-3807. Deposit of proceeds of bonds. — No moneys derived from the sale of bonds of any institution or otherwise borrowed by such institution under the provisions of sections 33-3801 — 33-3813, [Idaho Code,] shall be required to be paid into the state treasury but shall be deposited by the treasurer or other fiscal officer of the institution, subject to the public depository law. Such money shall be disbursed as may be directed by the board and in accordance with the terms of any agreements with the holder or holders of any bonds. This section shall not be construed as limiting the power of the institution to agree in connection with the issuance of any of its bonds as to the custody and disposition of the moneys received from the sale of such bonds or the income and revenue of the institution pledged and assigned to or in trust for the benefit of the holder or holders thereof. [1935 (1st E.S.), ch. 55, § 7, p. 145; am. 1969, ch. 255, § 2, p. 787.]

STATUTORY NOTES

Cross References. — Public depository law, § 57-101 et seq.

33-3808. Validity of bonds. — The bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the institution issuing the same. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the bonds or taken in connection therewith. [1935 (1st E.S.), ch. 55, § 8, p. 145.]

33-3809. Other funds not affected. — Nothing in sections 33-3801 — 33-3813 [, Idaho Code,] contained shall be construed to authorize any institution to contract a debt on behalf of, or in any way to obligate, the state of Idaho, or to pledge, assign or encumber in any way, or to permit the pledging, assigning or encumbering in any way of, appropriations made by the legislature, or revenue derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by the Idaho Admission Bill approved July 3, 1890, or other legislative enactments of the United States, for the use and benefit of the respective state educational institutions. [1935 (1st E.S.), ch. 55, § 9, p. 145.]

STATUTORY NOTES

Compiler's Notes. — The Idaho Admission Bill of July 3, 1890, referred to in this section, is compiled in the first volume of the Idaho Code.

JUDICIAL DECISIONS

Cited in: Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955).

33-3810. Bonds and other debt not obligations of state — Payable only from pledged revenue. — All bonds issued and other debt incurred pursuant to this act shall be exclusively obligations of the institution issuing such bonds or incurring such other debt payable only in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state of Idaho. Such bonds or other debt incurred shall not constitute a debt, legal or moral or otherwise of the state of Idaho, shall so recite on their face or on the first page of any evidence of indebtedness, and shall not be enforceable against the state, nor shall payment thereof be enforceable out of any funds of the institution issuing said bonds or incurring such other debt other than the income and revenues, if any, pledged and assigned to, or in trust for the benefit of, the holder or holders of such bonds or other evidence of indebtedness. [1935 (1st E.S.), ch. 55, § 10, p. 145; am. 1975, ch. 118, § 2, p. 246.]

STATUTORY NOTES

Compiler's Notes. — Section 3 of S.L. 1975, ch. 118, read: "It is hereby declared to be in the public interest of the state of Idaho, for the benefit and welfare of its people and in furtherance of education and learning that the powers of institutions to borrow under 'The Educational Institutions Act of 1935' be clarified and further elaborated in the furtherance of the credit of said institutions and to provide certainty and stability for the financing of approved projects other than by bonded indebtedness, thus ensuring advantageous flexibility to the management and development of said institutions and the availability of financing upon the best terms and

rates available in consideration of the credit and economic feasibility of projects so funded. It is further declared that this act is the acknowledgment and clarification of powers to borrow and provide for repayment heretofore duly vested in said institutions and nothing herein shall be construed or interpreted to the prejudice or detriment of credit or loans outstanding on or closed or negotiated prior to the effective date hereof."

For words "this act," see Compiler's Notes, § 33-3801.

Effective Dates. — Section 4 of S.L. 1975, ch. 118 declared an emergency. Approved March 26, 1975.

JUDICIAL DECISIONS

ANALYSIS

Appropriation to pay.
Meaning of income.

Appropriation to Pay.

Session Laws 1955, ch. 277, appropriating the sum of \$100,000 to apply on dormitory revenue bond issue of \$375,000 issued by board of trustees of Northern Idaho College of Education (now Lewis-Clark State College) in 1950, under provisions of educational bond act, although college had been closed since 1951 due to failure of legislature to appropriate funds, was not unconstitutional on the ground that it was the attempt to loan the credit of the state of Idaho for a private purpose, since it was designed and intended for a public purpose, to wit payment of a college building in furtherance of educational objectives of the state. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

Meaning of Income.

A statute authorizing board of regents of the University of Idaho to borrow money from federal agencies to improve plant and to issue bonds enforceable only out of "income" and revenues pledged to bondholders authorized pledging net income of dormitories donated to regents and otherwise unencumbered for payment of bonds for proposed university infirmary, and authorized pledging of net, but not gross, income from the operation of infirmary to bondholders, since "income" means gain or profit in common parlance. *State ex rel. Miller v. State Bd. of Educ.*, 56 Idaho 210, 52 P.2d 141 (1935).

33-3811. Attorney general to pass on validity of bonds — Incontestable if approved. — Any institution may submit to the attorney general of the state of Idaho any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of sections 33-3801 — 33-3813, [Idaho Code,] and such bonds when delivered and paid for will constitute binding and legal obligations of such institution enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the Constitution and laws of the state of Idaho. When delivered and paid for, any bond bearing upon its back such certificate shall in any suit, action or proceeding involving its validity be conclusively deemed to be fully authorized by sections 33-3801 — 33-3813 [, Idaho Code,] and to have been issued, sold, executed and

delivered in conformity with the Constitution and laws of the state of Idaho and shall be deemed to be valid and binding and enforceable in accordance with its terms, and such bonds shall be incontestable for any cause. [1935 (1st E.S.), ch. 55, § 11, p. 145.]

33-3812. Separability. — If any provision of sections 33-3801 — 33-3813, [Idaho Code,] or the application thereof to any person, body or circumstances shall be held invalid, the remainder of the act and the application of such provision to persons, bodies, or circumstances other than those as to which it shall have been held invalid shall not be affected thereby. [1935 (1st E.S.), ch. 55, § 12, p. 145.]

33-3813. Construction of act. — The powers conferred by this act shall be in addition to and supplemental to, and the limitations imposed by this act shall not affect the powers conferred by any other law, general or special, and bonds may be issued hereunder notwithstanding the provisions of any other such law and without regard to the procedure required by any other such law. Insofar as the provisions of the act are inconsistent with the provisions of any other law, general or special, the provisions of sections 33-3801 — 33-3813 [, Idaho Code,] shall be controlling. [1935 (1st E.S.), ch. 55, § 13, p. 145.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," (1st E.S.), ch. 55 declared an emergency. Approved April 1, 1935.
see Compiler's Notes, § 33-3801.
Effective Dates. — Section 15 of S.L. 1935

CHAPTER 39

IDAHO ARCHAEOLOGICAL SURVEY

| SECTION. | SECTION. |
|---|---|
| 33-3901. Idaho archaeological survey created — Purpose — Definition — Advisory board. | tion with other agencies — Satellite offices. |
| 33-3902. Meetings — Office — State archaeologist. | 33-3904. Reports. |
| 33-3903. Duties — Publications — Coopera- | 33-3905. Archaeological survey account. |
| | 33-3906 — 33-3910. [Repealed.] |

33-3901. Idaho archaeological survey created — Purpose — Definition — Advisory board. — (1) There is hereby created the Idaho archaeological survey, to be administered as a special cooperative program under the authority of the Idaho state board of education and the board of regents of the university of Idaho. It is the policy of the state of Idaho that the archaeological resources recovered from within the state, and their associated documentation, be accorded long-term curation within the state to ensure their continued accessibility by the educational programs of the state universities and for the public benefit of the citizens of the state of Idaho. It is a policy of the state of Idaho that archaeological inventories conducted within the state be documented in a comprehensive database accessible by educational programs and for other public purposes consistent

with the protection of these resources. The survey shall be the lead state entity for the compilation, coordination, preservation and dissemination of archaeological survey data and long-term curation of collections for Idaho. This information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies, including the educational programs at the state universities which recover, use and care for archaeological materials. Nothing in this chapter shall limit the established role of the state universities in archaeological research and educational programs using archaeological materials.

(2) For the purposes of this chapter "archaeological resources" refer to both cultural remains and associated environmental materials recovered by archaeological studies and to sites on the landscape containing materials potentially supportive of anthropological or historical archaeological studies.

(3) There is hereby established a board for the survey which shall consist of the following members: the Idaho state archaeologist, who shall be director of the survey and nonvoting chairman of the advisory board, the academic vice presidents of the university of Idaho, Idaho state university and Boise state university or their designated representatives; the governor of the state of Idaho or his designated representative; and a member of the public who shall be elected by a majority vote of the advisory board and who shall serve for a term of two (2) years. Should a vacancy occur in the public member position, the board shall appoint a replacement to serve the remainder of the term. Members of the board shall be compensated as provided in section 59-509(b), Idaho Code, which compensation shall be paid from the archaeological survey account created in section 33-3905, Idaho Code. A quorum of the board shall be required to be present to conduct business. [I.C., § 33-3901, as added by 1992, ch. 116, § 1, p. 387.]

STATUTORY NOTES

Prior Laws. — Former §§ 33-3901 — 33-3905, which comprised S.L. 1893, p. 14, §§ 1-5; reen. 1899, p. 169, §§ 1-5; reen. R.C. & C.L., §§ 3027-3031; C.S., §§ 4888-4892; S.L. 1931, ch. 21, § 1, p. 48; I.C.A., §§ 32-3301 — 32-3305; S.L. 1943, ch. 4, § 1, p. 6; S.L. 1949, ch. 40, § 1, p. 64; S.L. 1965, ch. 60, § 1, p. 96, were repealed by S.L. 1979, ch. 159, § 2.

Compiler's Notes. — The state archaeologist, referred to in subsection (3), is a staff member of the Idaho state historic preservation office, which is a division of the Idaho state historical society. See <http://www.idahohistory.net/SHPO.html>.

33-3902. Meetings — Office — State archaeologist. — The board shall hold annual meetings at the Idaho state historical society, the university of Idaho, Idaho state university or Boise state university on the first Monday of June of each year and shall hold such other meetings as it may deem necessary. The chief office of the survey and the office of its secretary shall be maintained at the Idaho state historical society. The professional archaeologist holding the position of state archaeologist in the Idaho state historical society is designated director of the survey. [I.C., § 33-3902, as added by 1992, ch. 116, § 1, p. 387.]

STATUTORY NOTES

Prior Laws. — Former § 33-3902 was repealed. See Prior Laws, § 33-3901.

33-3903. Duties — Publications — Cooperation with other agencies — Satellite offices. — It shall be the duty of the Idaho archaeological survey to establish standards for documenting archaeological inventories; to establish standards for curation of archaeological collections; to conduct statewide studies in the field; to perform laboratory studies; to prepare and publish reports on the archaeological resources of the state; to perform analyses and long-term curation of archaeological collections and site inventory information; to determine and distribute to participating institutions an equitable portion of survey and inventory funds from the federal historic preservation funds received by the state of Idaho; and to fix a price upon printed reports and deposit receipts from sales in the archaeological survey account to be used for the preparation and publication of reports of the survey and for no other purpose. The survey shall be allowed to seek and accept funded projects from and form cooperative programs with state and federal agencies and private funding sources for support of the survey's inventory and curation activities. All moneys received from these projects shall be deposited in the archaeological survey account and shall be used for the aforementioned projects and services. The survey shall be allowed to have satellite offices at the university of Idaho, Idaho state university and Boise state university for the purpose of caring for archaeological collections or survey information or both. [I.C., § 33-3903, as added by 1992, ch. 116, § 1, p. 387.]

STATUTORY NOTES

Cross References. — Archaeological survey account, § 33-3905.

Prior Laws. — Former § 33-3903 was repealed. See Prior Laws, § 33-3901.

33-3904. Reports. — The Idaho archaeological survey shall annually, on or before the first day of January, make to the governor of the state and to the executive director of the Idaho state board of education and the board of regents of the university of Idaho a report detailing major events during the preceding year concerning the archaeological resources of the state, a report of its expenditures and of the work of the survey during the preceding year, and budget requests for the following year; and it shall make a similar report of its doings and its expenditures to the state legislature through the legislative council. [I.C., § 33-3904, as added by 1992, ch. 116, § 1, p. 387.]

STATUTORY NOTES

Prior Laws. — Former § 33-3904 was repealed. See Prior Laws, § 33-3901.

33-3905. Archaeological survey account. — There is hereby created in the dedicated fund of the state treasury, the archaeological survey

account. Moneys in the account shall consist of appropriations, gifts, grants, bequests or moneys from any other source and shall be utilized by the state archaeological survey to implement and carry out the provisions of this chapter. Moneys in the account may be expended only pursuant to appropriation by the legislature except for funds received under contracts and grants which may be expended for those purposes without action by the legislature. [I.C., § 33-3905, as added by 1992, ch. 116, § 1, p. 387.]

STATUTORY NOTES

Prior Laws. — Former § 33-3905 was repealed. See Prior Laws, § 33-3901.

33-3906 — 33-3910. Powers of corporations — Election and qualifications of directors and trustees — Powers of directors — Religious tests prohibited — Corporations for private gain prohibited. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, §§ 3032-3036; C.S., §§ 4893-4897; 1931, ch. which comprised 1893, p. 14, §§ 6-10; reen. 21, § 2, p. 48; I.C.A., §§ 32-3306 — 32-3310, 1899, p. 169, §§ 6-10; reen. R.C. & C.L., were repealed by S.L. 1979, ch. 159, § 2.

CHAPTER 40

BOISE STATE UNIVERSITY

SECTION.

- 33-4001. Boise State University established — Standards — Professional-technical programs.
- 33-4002. State board of education as a succeeding board of trustees.
- 33-4003. Means and methods to effectuate transition — Assumption of liabilities — Exception.

SECTION.

- 33-4004. Assumption of construction bonds by state board of education.
- 33-4005. Powers and duties of the board of trustees.
- 33-4006. [Repealed.]
- 33-4007. Name change.

33-4001. Boise State University established — Standards — Professional-technical programs. — The college now known as Boise state college and previously operated and conducted by Boise community college district in Ada County, Idaho, known as Boise college, shall be established in the city of Boise, Idaho, as an institution of higher education of the state of Idaho, for the purpose of giving instruction in college courses in sciences, arts and literature, professional, technical and other courses of higher education, such courses being those that are usually included in colleges and universities leading to the granting of appropriate collegiate degrees, said college to be known as Boise State University. The standards of the courses and departments maintained in said university shall be at least equal to, or on a parity with those maintained in other similar colleges and universities in Idaho and other states. All programs in the professional-technical departments, including terminal programs now established and maintained, may be continued and such additional professional-technical and

terminal programs may be added as the needs of the students attending such university taking professional-technical and terminal programs shall warrant, and the appropriate certificate for completion thereof shall be granted. The courses offered and degrees granted at said university shall be determined by the board of trustees. [1967, ch. 369, § 1, p. 1062; am. 1974, ch. 25, § 1, p. 803; am. 1999, ch. 329, § 35, p. 852.]

STATUTORY NOTES

Cross References. — Tuition at state colleges and universities not required, exceptions, § 33-3717.

33-4002. State board of education as a succeeding board of trustees. — The general supervision, government and control of said Boise state university shall be vested in the state board of education which shall act as the board of trustees of said university. [1967, ch. 369, § 2, p. 1062; am. 1974, ch. 25, § 2, p. 803.]

33-4003. Means and methods to effectuate transition — Assumption of liabilities — Exception. — The board of trustees of Boise Junior College District are hereby empowered, authorized and directed to convey and assign all property rights, contracts and other tangible and intangible assets of the district, and/or college to the state board of education as a succeeding board of trustees of said college provided in Section 2 [33-4002, Idaho Code,] of this act. The state board of education and the board of trustees of Boise Junior College District are hereby authorized and directed to confer between themselves and with third parties as may be necessary, to determine and agree upon appropriate means and methods to effectuate the orderly transfer of Boise College on January 1, 1969, as herein provided and each of said boards are hereby authorized and directed to have prepared and execute all instruments and documents necessary therefor. The respective boards shall, immediately after the passage of this act [April 10, 1967] confer, cooperate and agree upon all contracts and other matters which will or may carry over beyond January 1, 1969 and each board is authorized to execute any and all documents, agreements, employment contracts and do all things necessary, both before and after January 1, 1969 to effectuate the transition of said college herein provided with the least interference and disruption of the educational processes of said college. On and after January 1, 1969 the state board of education as the board of trustees shall assume the liabilities and responsibilities of Boise Junior College District excepting, however, the liabilities of the district for the payment of principal and interest of general obligation bonds theretofore issued by the district. [1967, ch. 369, § 3, p. 1062.]

STATUTORY NOTES

Compiler's Notes. — The words "this act", Chapter 369, which is compiled as §§ 33-4001 as used in this section, refer to S.L. 1967, — 33-4005.

33-4004. Assumption of construction bonds by state board of education. — On or after January 1, 1969, Boise Junior College Housing Commission and the state board of education shall negotiate and agree with third persons holding revenue bonds issued by Boise Junior College Housing Commission for the construction of dormitory, residence and student union facilities for the assumption of said bonds by the state board of education in such manner as may be agreeable and lawful. The state board of education is hereby authorized, if required to effectuate this act, to issue its bonds for the refunding of the bonds of Boise Junior College Housing Commission issued prior to January 1, 1969, in the same manner that it may refund bonds issued by it as provided in the Educational Institutions Act of 1935, being Chapter 38 of Title 33, Idaho Code. [1967, ch. 369, § 4, p. 1062.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," see Compiler's Notes, § 33-4003.

33-4005. Powers and duties of the board of trustees. — The board of trustees of said college upon proper conveyance thereof, shall have all rights and title to real estate and personal property of said college, control over all buildings, power to elect presidents and contract with faculty of said college, supervise students and all powers and duties with reference to said college as are now granted by the statutes of the state of Idaho to the board of regents of the University of Idaho, and the board of trustees of Idaho State University as set forth in Chapters 28, 29, 30, 36, 37 and 38 of Title 33, Idaho Code, as the same may hereafter be amended, are fully empowered to exercise said powers and assume such duties with relation to said college from and after January 1, 1969, unless otherwise specifically authorized herein to the exercise of said powers prior to said date. [1967, ch. 369, § 5, p. 1062.]

33-4006. Junior college district to remain until all bonds retired — Board of trustees to retain authority required to effectuate purpose of act. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1967, ch. 369, § 6, p. 1062, was repealed by S.L. 1987, ch. 39, § 1.

33-4007. Name change. — Whenever the name of Boise college or Boise state college shall appear in any statute, such statute is hereby amended to read Boise state university as fully and completely as though said name in said statute was specifically amended herein, and all such statutes shall be construed to refer to and mean Boise state university. [1974, ch. 25, § 3, p. 803.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1974, ch. 25, declared an emergency. Approved February 22, 1974.

CHAPTER 41

INTERSTATE COMPACTS

SECTION.

33-4101. Interstate compact for education enacted into law.

33-4102. Establishing the Idaho Education Council.

33-4103. Designating the state agency to receive and file bylaws.

SECTION.

33-4104. Interstate compact on qualification of educational personnel.

33-4105. "Designated state official."

33-4106. Contracts kept on file — Published.

33-4101. Interstate compact for education enacted into law. — The Interstate Compact for Education established by the Education Commission of the States is hereby enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

INTERSTATE COMPACT FOR EDUCATION

ARTICLE I — PURPOSE AND POLICY

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.
2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.
3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and records of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as

well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

ARTICLE II—STATE DEFINED

As used in this compact, “state” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III —THE COMMISSION

A. The Education Commission of the States, hereinafter called “the commission,” is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten non-voting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (J).

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (F) of this Article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—POWERS

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this Article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V—COOPERATION WITH FEDERAL GOVERNMENT

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI—COMMITTEES

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the commission shall be members

of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

ARTICLE VII—FINANCE

A. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (G) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III (G) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII—ELIGIBLE PARTIES; ENTRY INTO AND WITHDRAWAL

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term, "governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this Article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. [1967, ch. 15, § 1, p. 24.]

STATUTORY NOTES

Compiler's Notes. — Beginning in 1985, the position referred to in this compact as "executive director" has been designated as "president" by the education commission of the states. See <http://www.ecs.org>.

Notwithstanding the provision of Article

VI, the steering committee of the education commission of the states is now made up of one representative from each member state (all states, except Washington), and any vacancies on the committee are to be filled by appointment by the chair of the commission.

33-4102. Establishing the Idaho Education Council. — There is hereby established the “Idaho Education Council” composed of the members of the “Education Commission of the States” representing this state, and eight other persons appointed by the governor for terms of three years. Such other person shall be selected so as to be broadly representative of professional and lay interest within this state having the responsibilities for, knowledge with respect to, and interest in educational matters. The chairman shall be designated by the governor from among its members. The council shall meet on the call of its chairman or at the request of a majority of its members, but in any event the council shall meet not less than three times in each year. The council may consider any and all matters relating to recommendations of the education commission of the states and the activities of the members in representing the state thereon. [1967, ch. 15, § 2, p. 24.]

33-4103. Designating the state agency to receive and file bylaws. — Pursuant to Article III (I) of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the state board of education. [1967, ch. 15, § 3, p. 24.]

STATUTORY NOTES

Compiler's Notes. — The compact, referred to in this section, is contained in § 33-4101.

Section 4 of S.L. 1967, ch. 15 provided that duly authenticated copies of this act should, upon its approval, be transmitted by the secretary of state to the governor of each state,

the Attorney-general and the Secretary of State of the United States, and the council of state governments.

Effective Dates. — Section 5 of S.L. 1967, ch. 15 declared an emergency. Approved February 10, 1967.

33-4104. Interstate compact on qualification of educational personnel. — The interstate agreement on qualification of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I, PURPOSE, FINDINGS, AND POLICY.

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are qualified educational personnel who move for family and other personal reasons but who are hindered in

using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states or origin, can increase the availability of educational manpower.

ARTICLE II, DEFINITIONS.

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept," or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivision thereof) which accepts education [educational] personnel in accordance with the terms of a contract made pursuant to Article III.

ARTICLE III, INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS.

(1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(2) Any such contract shall provide for:

a. Its duration.

b. The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

c. Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice on basic educational standards.

d. Any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than five (5) years but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

ARTICLE IV, APPROVED AND ACCEPTED PROGRAMS.

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within the state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contracts.

ARTICLE V, INTERSTATE COOPERATION.

The party states agree that:

(1) They will, so far as practicable, prefer the making of multi-lateral contracts pursuant to article III of this agreement.

(2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualifications and for this purpose shall cooperate with agencies, organizations, and associations

interested in certification and other elements of educational personnel qualifications.

ARTICLE VI, AGREEMENT EVALUATION.

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes.

ARTICLE VII, OTHER ARRANGEMENTS.

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

ARTICLE VIII, EFFECT AND WITHDRAWAL.

(1) This agreement shall become effective when enacted into law by two (2) states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX, CONSTRUCTION AND SEVERABILITY.

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. [1969, ch. 194, § 1, p. 565.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word “educational” in Art. II, subdivision (6) was inserted by the compiler. The words in parentheses so appeared in the law as enacted.

33-4105. “Designated state official.” — The “designated state official” shall be the superintendent of public instruction. The superintendent of

public instruction shall enter into contracts pursuant to Article III of the agreement only with the approval of the state board of education. [1969, ch. 194, § 2, p. 565.]

STATUTORY NOTES

Cross References. — Superintendent of public instruction, § 67-1501 et seq.

33-4106. Contracts kept on file — Published. — True copies of all contracts made on behalf of the state of Idaho pursuant to the agreement shall be kept on file with the state board of education. The state board of education shall publish all such contracts in convenient form. [1969, ch. 194, § 3, p. 565; am. 1991, ch. 30, § 5, p. 58.]

STATUTORY NOTES

Compiler's Notes. — Section 16 of S.L. 1991, ch. 30 read: "DISPOSITION OF RECORDS. (a) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was duplicated by filing with another state agency, the secretary of state may destroy those documents in his files."

"(b) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was not duplicated by filing with another state agency, the secretary of state may transfer those documents to the state historical library if it is

determined that they have historical significance, and otherwise may destroy them."

"(c) Whenever this act has transferred the place of filing for a type of document from the secretary of state to another agency, the secretary of state and the head of the other agency may thereafter agree to transfer those documents filed before the effective date of this act to the agency which has acquired filing responsibility."

Effective Dates. — Section 4 of S.L. 1969, ch. 194 declared an emergency. Approved March 21, 1969.

CHAPTER 42

NORTH IDAHO COLLEGE

SECTION.

33-4201. North Idaho College.

33-4201. North Idaho College. — That the educational institution located in Coeur d'Alene, Idaho, heretofore known as North Idaho Junior College, shall be known after the effective date of this act as North Idaho College; and wherever the name North Idaho Junior College shall appear in any statute, such statute hereby is amended to read North Idaho College as fully and completely as though the said name on said statute was specifically amended herein, and all such statutes shall be construed to refer to and mean North Idaho College. [1971, ch. 68, § 1, p. 154.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1971, ch. 68 provided that this act should be in full force and effect on and after July 31, 1971.

CHAPTER 43

SCHOLARSHIPS

SECTION.

- 33-4301. Short title.
- 33-4302. Scholarships — State aid.
- 33-4302A. Public safety officer dependent scholarships — State aid.
- 33-4303. Short title.
- 33-4304. Public policy.
- 33-4305. Purposes.
- 33-4306. Definitions.
- 33-4307. Eligibility — Maximum amounts — Conditions.
- 33-4308. Maximum number of grants.
- 33-4309. Remittance in case of discontinued attendance.

SECTION.

- 33-4310. Discrimination prohibited.
- 33-4311. Certifications of enrollment and termination of attendance of grant recipients.
- 33-4312. State board of education and board of regents of University of Idaho as administrative agency.
- 33-4313. Duties of board.
- 33-4314. Appointment of administrator and staff.
- 33-4315. No control of nonpublic institutions which accept grant recipients.

33-4301. Short title. — This act may be cited as “The POW/MIA Scholarship Act of 1972.” [1972, ch. 393, § 1, p. 1136.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1972, Chapter 393, which is compiled as §§ 33-4301 and 33-4302.

33-4302. Scholarships — State aid. — (1) The following individuals shall be eligible for the scholarship program provided for herein:

(a) Any dependent of any Idaho citizen who is a resident of the state of Idaho on or after the effective date of this act and who has been determined by the federal government to be a prisoner of war or missing in action; or to have died of, or become disabled by, injuries or wounds sustained in action in southeast Asia, including Korea, or in Iraq or in Afghanistan or who shall become so hereafter, in any area of armed conflict in which the United States is a party; and

(b) Any dependent of any member of the armed forces of the United States who is stationed in the state of Idaho on military orders and who is deployed from the state of Idaho to any area of armed conflict in which the United States is a party and who has been determined by the federal government to be a prisoner of war or missing in action; or to have died of, or become disabled by, injuries or wounds sustained in action as a result of such deployment. Provided further, that such dependent must be a resident of the state of Idaho and must have completed secondary school or its equivalent in the state of Idaho.

(2) An eligible individual who applies for the scholarship provided for herein shall, after verification of eligibility, receive the scholarship and be admitted to attend any public institution of higher education or public professional-technical college within the state of Idaho without the necessity of paying tuition and fees therefor; such student shall be provided with books, equipment and supplies necessary for pursuit of such program of enrollment not to exceed five hundred dollars (\$500) per quarter, semester, intensified semester, or like educational period; such student shall be

furnished on-campus housing and subsistence for each month he or she is enrolled under this program and actually resides in such on-campus facility; provided, however, that such educational benefits shall not exceed a total of thirty-six (36) months or four (4) nine (9) month periods. Provided further, that the initiation of such educational benefits shall extend for a period of ten (10) years after achieving a high school diploma or its equivalency, or for a period of ten (10) years after the event giving rise to the eligibility for the scholarship, whichever is longer.

(3) The dependent shall meet such other educational qualifications as such institution of higher education or professional-technical college has established for other prospective students of this state.

(4) Application for eligibility under this section shall be made to the state board of education and the board of regents of the university of Idaho or the state board of vocational-technical education. The board shall verify the eligibility of the dependent and communicate such eligibility to the dependent and the affected institution or college.

(5) Affected institutions shall in their preparation of future budgets include therein costs resultant from such tuition, fee, book, equipment, supply, housing and subsistence loss for reimbursement thereof from appropriations of state funds.

For the purposes of this section, a member of the armed forces of the United States is considered disabled if he or she is unable to perform with reasonable continuity the material duties of any gainful occupation for which he or she is reasonably fitted by education, training and experience.

(6) Applicants for the scholarship program herein prescribed shall provide institutional administrative personnel with documentation of their rights under this act. [1972, ch. 393, § 2, p. 1136; am. 1991, ch. 90, § 1, p. 204; am. 1999, ch. 329, § 36, p. 852; am. 2002, ch. 276, § 1, p. 809; am. 2005, ch. 326, § 1, p. 1017; am. 2007, ch. 95, § 1, p. 277; am. 2008, ch. 185, § 1, p. 557.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 95, added the introductory language in subsection (1); added the subsection (1)(a) designation and subsection (1)(b); designated the last paragraph of subsection (1) as subsection (2), and therein added “An eligible individual who applies for the scholarship provided for herein shall, after verification of eligibility, receive the scholarship and,” and inserted “the initiation of” in the last sentence; and redesignated former subsections

(2) through (5) as (3) through (6).

The 2008 amendment, by ch. 185, in paragraphs (1)(a) and (1)(b), inserted “or become disabled by”; and added the second paragraph in subsection (5).

Compiler’s Notes. — For words “this act,” see Compiler’s Notes, § 33-4301.

Effective Dates. — Section 3 of S.L. 1972, ch. 393 provided the act should take effect on and after June 1, 1972.

33-4302A. Public safety officer dependent scholarships — State aid. — (1) Any dependent of a full-time or part-time public safety officer, as defined in subsection [(15)] of this section, employed by or volunteering for the state of Idaho or for a political subdivision of the state of Idaho, which public safety officer is or was a resident of the state of Idaho at the time such officer was killed or disabled in the line of duty shall be admitted to attend

any public institution of higher education or public professional-technical college within the state of Idaho without the necessity of paying tuition and fees therefor. Said dependents shall be provided by the institution or college with books, equipment and supplies necessary for pursuit of the dependent's chosen program of enrollment not to exceed the actual cost therefor, or five hundred dollars (\$500), whichever is less, per quarter, semester, intensified semester, or like education period. Said dependent shall be provided with the institution or college's published normal on-campus residential facility housing and meals program for each month the dependent is enrolled full time under this statute and continues to actually reside in such on-campus residential facility. Provided however, that the educational benefits provided for in this section shall not exceed a total of thirty-six (36) months or four (4) nine-month periods; provided further, that such educational benefits shall not extend beyond ten (10) years following the date the dependent receives a high school diploma, a high school equivalency diploma, a special diploma or a certificate of high school completion, or beyond the date such dependent turns thirty (30) years old, whichever comes first.

(2) The dependent shall be required to meet the educational qualifications as such institution of higher education or professional-technical college as established for other prospective students of this state. Application for eligibility under this section shall be made to the state board of education and board of regents of the University of Idaho. The board shall verify the eligibility of the dependent and communicate such eligibility to the dependent and the affected institution or college.

(3) Affected institutions and colleges shall, in their preparation of future budgets, include therein costs resulting from such tuition, fees, housing, meals, books, equipment and supplies for reimbursement thereof from appropriation of state funds.

For the purposes of this section, a public safety officer employed by or volunteering for the state of Idaho or for a political subdivision of the state of Idaho is considered disabled if he or she is unable to perform with reasonable continuity the material duties of any gainful occupation for which he or she is reasonably fitted by education, training and experience.

(4) The scholarships provided in this section shall be available for dependents of public safety officers who were killed or disabled in 1975 or thereafter.

(5) For purposes of this section:

(a) "Public safety officer" means a peace officer or firefighter, or a paramedic, emergency medical technician or first responder as those terms are defined in section 56-1012, Idaho Code.

(b) "Volunteering" means contributing services as a bona fide member of a legally organized law enforcement agency, fire department or licensed emergency medical service provider organization.

(6) The scholarship provided in this section shall not be available unless it is determined that:

(a) The death or disablement of the public safety officer occurred in the performance of the officer's duties;

(b) The death or disablement was not caused by the intentional misconduct of the public safety officer or by such officer's intentional infliction of injury; and

(c) The public safety officer was not voluntarily intoxicated at the time of death. [I.C., § 33-4302A, as added by 1993, ch. 346, § 1, p. 1288; am. 1994, ch. 417, § 1, p. 1307; am. 1999, ch. 329, § 37, p. 852; am. 1999, ch. 369, § 1, p. 975; am. 2002, ch. 283, § 1, p. 825.]

STATUTORY NOTES

Amendments. — This section was amended by two 1999 acts — ch. 329, § 37 and ch. 369, § 1, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 329, § 37, substituted "professional-technical" for "vocational-technical" in two places.

The 1999 amendment, by ch. 369, § 1, redesignated the former first paragraph as subsections (1) and (2), redesignated the former second paragraph as subsection (3); inserted "Peace officer/firefighter dependent" preceding "scholarships" in the catchline; added the last two sentences of current subsection (1); added the last two sentences of current subsection (2); substituted "college" for "school" throughout; in the first sentence

of subsection (1), deleted "in an amount not to exceed eight hundred dollars (\$800) and" following "tuition and fees"; in the second sentence of subsection (1), inserted "Said dependents" at the beginning of the sentence, inserted "by the institution or college" following "shall be provided," substituted "the dependent's chosen" for "their," substituted "the actual cost therefor, or five hundred dollars (\$500)" for "three hundred dollars (\$300)," inserted "whichever is less" preceding "per quarter"; in subsection (3), inserted "and colleges" following "Affected institutions," inserted "housing, meals" following "such tuition, fees."

Compiler's Notes. — The bracketed parentheses in subsection (1) were inserted by the compiler.

33-4303. Short title. — The scholarship program provided for in sections 33-4303 through 33-4315, Idaho Code, shall be known and cited as the "Idaho Robert R. Lee Promise Scholarship Program." [1974, ch. 87, § 1, p. 1178; am. 2000, ch. 206, § 1, p. 515; am. 2003, ch. 214, § 1, p. 561.]

33-4304. Public policy. — The legislature hereby recognizes and declares that substantial economic and social benefits accrue to the state because of an educated citizenry, and that the encouragement of the state's most talented Idaho students to enroll in Idaho postsecondary educational institutions is an important element for assuring the future leadership for the state. [1974, ch. 87, § 2, p. 1178; am. 2007, ch. 343, § 1, p. 1014.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 343, substituted "Idaho students" for "Idaho secondary school graduates."

33-4305. Purposes. — The purpose of this act is:

(1) To establish a state scholarship program for the most talented Idaho secondary school graduates or the equivalent, consisting of category A students with outstanding academic qualifications and category B students with a cumulative grade point average for grades nine (9) through twelve (12) of 3.0 or better or achieving an ACT score of 20 or better or who become eligible after the student's first semester or who meet any other criteria as

may be established by the state board of education and the board of regents of the university of Idaho, who will enroll in undergraduate nonreligious academic and professional-technical programs in eligible postsecondary institutions in the state; and

(2) To designate the state board of education and the board of regents of the university of Idaho as the administrative agency for the state scholarship program. [1974, ch. 87, § 3, p. 1178; am. 1999, ch. 329, § 19, p. 85; am. 2000, ch. 206, § 2, p. 515.]

STATUTORY NOTES

Compiler's Notes. — The words "this act," used in this section, refer to S.L. 1974, chapter 87, which is compiled as §§ 33-4303 to 33-4315.

33-4306. Definitions. — As used in this act, unless the context otherwise requires:

(1) "Eligible postsecondary institution" means a public postsecondary organization governed or supervised by the state board of education, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of section 33-2106, Idaho Code, or the state board for professional-technical education or any educational organization which is operated privately and not for profit under the control of an independent board and not directly controlled or administered by a public or political subdivision. A public or private educational organization becomes eligible to participate in category B grant awards if the organization agrees to match awards granted to each eligible category B student. If an institution declines to match awards, an eligible student will receive the state portion of the award to that institution.

(2) "Educational costs" means student costs for tuition, fees, room and board, or expenses related to reasonable commuting, books and such other expenses reasonably related to attendance at a postsecondary educational institution.

(3) "Student" means an individual resident student as defined in section 33-3717B or 33-2110B, Idaho Code, enrolled full time and carrying a sufficient number of credit hours, or their equivalent, to secure an individual's first degree, certificate, diploma or less, toward which the individual is working, in no more than the number of semesters, or equivalent, normally required by the eligible postsecondary institution in the program in which the individual is enrolled and provided that the baccalaureate degree, certificate, diploma or lesser program requires at least six (6) months or equivalent of consecutive attendance. A student engaged in a four (4) year baccalaureate program shall not be terminated from this scholarship program by having earned an intermediate degree, certificate or diploma.

(4) "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary institution, regardless of the term used at the institution to describe such status.

(5) "Eligible category A student" means any individual who declares his intention to matriculate in an eligible postsecondary institution in the state of Idaho during the educational year immediately following:

(a) The individual's completion of secondary school or its equivalent in the state of Idaho; or

(b) The individual's graduation from an accredited secondary school, or completion of secondary school or its equivalent, outside of the United States, provided that the individual graduated from such school or successfully completed all requirements, and the individual and a parent of the individual were residents of the state of Idaho, within one (1) year of leaving the state due to the military status or job relocation of a parent.

(6) "Eligible category B student" means any student, having completed secondary school or its equivalent in the state of Idaho, or outside of the United States if within one (1) year of leaving the state due to the military status or job relocation of a parent (a) the student completed such secondary school or its equivalent, and (b) the student and a parent of the student were residents of the state of Idaho, and who enrolls as a student in an eligible postsecondary institution in the state of Idaho prior to reaching twenty-two (22) years of age. To maintain eligibility a student must achieve and maintain a 2.5 cumulative grade point average while enrolled in an eligible postsecondary institution. Students meeting the requirements of this subsection who were not eligible for a grant in the first term of postsecondary education and who achieve and maintain a 2.5 cumulative grade point average based on a 4.0 system in an eligible postsecondary institution will become eligible for grant payments in subsequent school terms.

(7) "Grant" means an award to an eligible student for matriculation in an eligible postsecondary institution in the state of Idaho.

(8) "Educational year" means the period from July 1 of a year through June 30 of the succeeding year.

(9) "Competitive examination" means standardized examination(s) measuring achievement administered annually on a voluntary basis on a specified date and at specified locations announced publicly.

(10) "High school record," for category A students, shall be defined by the state board of education and the board of regents of the university of Idaho and shall include, but need not be limited to, an individual's cumulative grade point average and such other measure that demonstrates difficulty of course load taken and extraordinary academic performance, and which for Idaho secondary school graduates is certified by an official of such secondary school.

(11) "High school record," for category B students, shall be defined by the state board of education and the board of regents of the university of Idaho and shall include, but need not be limited to, an individual's secondary school cumulative grade point average or a composite score on the American college test (ACT).

(12) "Cumulative grade point average" is defined as a student's cumulative grade point average for all courses taken in grades nine (9) through twelve (12) and calculated on a grade of A equals 4.0 points, a grade of B equals 3.0 points, a grade of C equals 2.0 points, a grade of D equals 1.0 point and a grade of F equals 0.0 points. [1974, ch. 87, § 4, p. 1178; am. 1979, ch. 72, § 1, p. 178; am. 1999, ch. 329, § 20, p. 852; am. 2000, ch. 206, § 3, p. 515; am. 2002, ch. 117, § 1, p. 331; am. 2005, ch. 210, § 7, p. 626; am. 2007, ch. 343, § 2, p. 1014.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 343, in subsection (5)(a), substituted “completion of secondary school or its equivalent” for “graduation from an accredited secondary school”; in subsection (5)(b), inserted “or completion of secondary school or its equivalent” and “or successfully completed all requirements”; in subsections (10) and (11), substituted “shall include” for “may include”; and in subsection (10), substituted the lan-

guage beginning “an individual’s cumulative grade point average” for “an individual’s rank in his secondary school class, grade point average, and difficulty of course load taken as certified by an official of such secondary school, and the individual’s secondary school department as evaluated by at least two (2) officials of such secondary school.”

Compiler’s Notes. — For words “this act,” see Compiler’s Notes, § 33-4305.

33-4307. Eligibility — Maximum amounts — Conditions. — A grant may be awarded to an eligible student for matriculation at an eligible postsecondary educational institution in the state of Idaho if:

(1) The individual is accepted for enrollment as a full-time undergraduate or professional-technical student, as follows:

(a) In the case of an individual beginning his first year or freshman year of postsecondary education, he has satisfied the requirements for admission and has enrolled in an eligible postsecondary institution.

(b) In the case of an individual enrolled in an eligible postsecondary institution following the successful completion of the first term, he continues to meet the requirements of this act and has maintained such high standards of performance as may be required. Provided that high academic standards are maintained in accordance with requirements of this chapter, a student continues to be eligible when transferring from one (1) major program to another.

(c) In the case of an individual transferring from one (1) eligible postsecondary institution in Idaho to another eligible postsecondary institution in Idaho, he continues to meet the requirements of this act, is accepted and enrolled at the eligible postsecondary institution to which he is transferring, and has maintained such high standards of performance as may be required.

(2) The grant for category A students is as follows:

(a) The grant payment to an individual per educational year for attendance on a full-time basis is not in excess of an amount determined annually by the state board of education or in excess of the total educational costs as certified by an official of the eligible postsecondary institution to be attended by the individual receiving the grant, whichever is less.

(b) The total grant payments over a period of six (6) years to an individual may not exceed four (4) annual grants or the total educational costs for four (4) educational years completed as certified by an official of the eligible postsecondary institution or institutions attended by the individual receiving the grant, whichever is less.

(c) The individual receiving such a grant signs an affidavit stating that the grant will be used for educational costs only.

(d) The grant is awarded on the basis of extraordinary performance in standardized, unweighted competitive examination and high school record.

(e) The individual receiving the grant is not precluded from receiving other financial aid, awards, or scholarships, provided the total of the grant and such other financial aid, awards or scholarships does not exceed the total educational costs for attendance at an eligible postsecondary institution as certified by an official of the eligible postsecondary institution to be attended by the individual receiving the grant.

(f) Grant payments shall correspond to academic terms, semesters, quarters or equivalent time periods at an eligible postsecondary institution; in no instance may the entire amount of a grant for an educational year, as defined in section 33-4306(8), Idaho Code, be paid to or on behalf of such student in advance.

(g) The individual has complied with such rules as may be necessary for the administration of this act.

(3) The grant for category B students is as follows:

(a) The grant payment to an individual per educational year for attendance on a full-time basis is not in excess of an amount determined annually by the state board of education and the board of regents of the university of Idaho and not to exceed one thousand two hundred dollars (\$1,200) per year including the required match.

(b) The total grant payments over a period of four (4) years to an individual may not exceed two (2) annual grants.

(c) The individual receiving such a grant signs an affidavit stating that the grant will be used for educational costs only.

(d) The grant is awarded on the basis of a high school record of a 3.0 grade point average or an ACT composite score of 20 or better and other criteria as may be established by the state board of education and the board of regents of the university of Idaho.

(e) The individual receiving the grant is not precluded from receiving other financial aid, awards or scholarships except that category A student award recipients are not eligible for category B awards.

(f) Grant payments shall correspond to academic terms, semesters, quarters or equivalent time periods at an eligible postsecondary institution; in no instance may the entire amount of a grant for an educational year, as defined in section 33-4306(8), Idaho Code, be paid to or on behalf of such student in advance. The first grant payments pursuant to this section for category B students shall be made in the fall of 2001 or in the first fall academic term following an appropriation and when moneys are available to implement the category B scholarship program, whichever date is later.

(g) The individual has complied with such rules as may be necessary for the administration of this chapter.

(h) All eligible postsecondary institutions will report annually to the state board of education and the board of regents of the university of Idaho the number of students for each term receiving a grant award and the number of awards that were matched by the institution. [1974, ch. 87, § 5, p. 1178; am. 1979, ch. 72, § 2, p. 178; am. 1990, ch. 403, § 1, p. 1128; am. 1993, ch. 346, § 2, p. 1288; am. 2000, ch. 206, § 4, p. 515; am. 2004, ch. 355, § 1, p. 1060; am. 2007, ch. 343, § 3, p. 1014.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 343, updated the section reference in subsection (2)(f).

Compiler's Notes. — For words "this act,"

see Compiler's Notes, § 33-4305.

Effective Dates. — Section 3 of S.L. 1993, ch. 346 declared an emergency. Approved April 1, 1993.

RESEARCH REFERENCES

A.L.R. — Construction and application of agreement by medical or social work student to work in particular position or at particular

location in exchange for financial aid in meeting costs of education. 83 A.L.R.3d 1273.

33-4308. Maximum number of grants. — (1) The total number of grants to eligible category A students shall not exceed one hundred (100) per year, nor a cumulative total number of grants of four hundred (400) outstanding at any given time.

(2) The total number of grants to category B students will be determined annually by the state board of education and the board of regents of the university of Idaho based on the number of eligible students, the individual award amount and the availability of funds. [1974, ch. 87, § 6, p. 1178; am. 2000, ch. 206, § 5, p. 515.]

33-4309. Remittance in case of discontinued attendance. — A grant may be made annually for a period not to exceed an educational year. If the student discontinues attendance before the end of any semester, quarter, term, or equivalent, covered by the grant after receiving payment under this act, the eligible postsecondary institution shall remit, up to the amount of any payments made under this grant, any prorated tuition, fees or room and board balances to the state board of education and the board of regents of the university of Idaho. The student shall be required to remit, up to the amount of any other reasonable grant balances, such grant balances to the state board of education and the board of regents of the university of Idaho. In the event of extreme hardship as determined by the state board of education and the board of regents of the university of Idaho, a student may request waiver of remittance. [1974, ch. 87, § 7, p. 1178; am. 2000, ch. 206, § 6, p. 515.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," see Compiler's Notes, § 33-4305.

RESEARCH REFERENCES

A.L.R. — Construction and application of agreement by medical or social work student to work in particular position or at particular

location in exchange for financial aid in meeting costs of education. 83 A.L.R.3d 1273.

33-4310. Discrimination prohibited. — The grants shall be awarded to eligible students without regard to any student's race, creed, color, sex,

national origin, ancestry, age or area of academic competence. [1974, ch. 87, § 8, p. 1178; am. 1979, ch. 72, § 3, p. 178.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1979, ch. 72 declared an emergency. Approved March 17, 1979.

33-4311. Certifications of enrollment and termination of attendance of grant recipients. — Eligible postsecondary institutions which accept students under the provisions of this act shall be required to comply with procedures for certification of enrollment of recipients of such grants, and shall be required to certify the termination of attendance by recipients of such grants within thirty (30) days following such termination. [1974, ch. 87, § 9, p. 1178.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," see Compiler's Notes, § 33-4305.

33-4312. State board of education and board of regents of University of Idaho as administrative agency. — The state board of education and the board of regents of the University of Idaho is hereby designated as the administrative agency for the state scholarship program created by this act. [1974, ch. 87, § 10, p. 1178.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," see Compiler's Notes, § 33-4305.

33-4313. Duties of board. — The state board of education and the board of regents of the university of Idaho shall be responsible for:

(1) Supervision of the issuance of public information concerning the provisions of this act.

(2) Determination of recipients of grants made pursuant to the provisions of this act.

(3) Adoption of rules necessary for processing and approving applications from students.

(4) Determination of the procedures for payment of grants to recipients.

(5) Maintenance of fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of funds.

(6) Submission of annual reports to the governor and legislature.

(7) Establishment of a reasonable and fair appeal procedure for those students and institutions who may have been adversely affected by the application procedures.

(8) Holding a public hearing, prior to the adoption of rules, for the purpose of providing interested parties with the opportunity of discussing such rules.

(9) Acceptance of funds from public and private sources, and such funds may be expended pursuant to appropriation to the state board of education and the board of regents of the university of Idaho for expenditure consistent with the purposes of this chapter.

(10) In the event funds from the millennium fund are used for category B scholarships, the state board of education and the board of regents of the university of Idaho may establish additional eligibility criteria for scholarship recipients. [1974, ch. 87, § 11, p. 1178; am. 2000, ch. 206, § 7, p. 515.]

STATUTORY NOTES

Cross References. — Idaho millenium fund, § 67-1803.

Compiler's Notes. — For words "this act," see Compiler's Notes, § 33-4305.

33-4314. Appointment of administrator and staff. — The state board of education and the board of regents of the University of Idaho may appoint an administrator and such other staff; the administrator shall perform such duties as are prescribed by the state board of education and the board of regents of the University of Idaho. [1974, ch. 87, § 12, p. 1178.]

33-4315. No control of nonpublic institutions which accept grant recipients. — This act shall not be construed as granting any authority to the state board of education and the board of regents of the University of Idaho to control or influence the policies of any eligible nonpublic postsecondary institution or junior college because such institution accepts individuals who receive grants, nor to require any such institution to admit, or, once admitted, to continue in such institution any individual receiving a grant. [1974, ch. 87, § 13, p. 1178.]

STATUTORY NOTES

Compiler's Notes. — For words "this act," see Compiler's Notes, § 33-4305.

Section 14 of S.L. 1974, ch. 87, reads: "The provisions of this act are hereby declared to be severable and if any provision of this act or

the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CHAPTER 44

IDAHO WORK STUDY PROGRAM

SECTION.

- 33-4401. Idaho work study program established.
- 33-4402. Public policy — Administrative agency.
- 33-4403. Definitions.
- 33-4404. Program purpose.

SECTION.

- 33-4405. Program requirements.
- 33-4406. Limitations.
- 33-4407. Eligible types of employment.
- 33-4408. Payment provisions.
- 33-4409. Record keeping requirements.

33-4401. Idaho work study program established. — There is hereby established for the state of Idaho the Idaho work study program. [I.C., § 33-4401, as added by 1989, ch. 124, § 1, p. 273.]

OPINIONS OF ATTORNEY GENERAL

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Const., Art. IX, § 5. OAG 89-5 (but see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand

employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (but see 1990 amendment of chapter).

33-4402. Public policy — Administrative agency. — The legislature hereby recognizes and declares that it is in the public interest to assure educational opportunity to Idaho postsecondary students. The Idaho work study program is an employment program designed to allow resident students with financial need to earn funds to assist in attending accredited institutions of higher education in Idaho or resident students with educational need to obtain work experience related to the student's course of academic study, pursuant to this chapter.

The state board of education is hereby designated as the administrative agency for the work study program. The board shall allocate funds appropriated to the program to eligible institutions based upon fall full-time equivalent enrollment in a manner established by board rule. [I.C., § 33-4402, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 1, p. 198.]

OPINIONS OF ATTORNEY GENERAL

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Const., Art. IX, § 5. OAG 89-5 (but see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand

employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (but see 1990 amendment of chapter).

33-4403. Definitions. — As used in this chapter:

(1) "Accredited institution of higher education" means any public or private university, college, or community college in Idaho accredited by the northwest association of schools and colleges, or any public professional-technical school operated by the state of Idaho or any political subdivision thereof; provided, that no institution of higher education shall be eligible to participate in the program unless it agrees to and complies with program rules adopted by the board pursuant to chapter 52, title 67, Idaho Code; provided, further, that private accredited institutions of higher education which are controlled by sectarian organizations, and students attending such institutions, may participate only in the educational need, off-campus work experience portion of this program and such off-campus employment may not be located at, or be performed on behalf of, a sectarian or religious establishment.

(2) "Board" means the state board of education.

(3) "Program" means the Idaho work study program established pursuant to this chapter.

(4) "Resident student" means an individual as defined in section 33-3717B, Idaho Code.

(5) "Student" means an individual currently at an Idaho school enrolled in a postsecondary degree program, or a state supported professional-technical program.

(6) "Student with educational need" means a post-high school student in good standing at an accredited institution of higher learning who is desirous of obtaining work experience related to the student's course of academic study, in either on-campus or approved off-campus employment, and who meets the institutional requirements for determining educational need; provided, however, a student whose academic course of study is sectarian in nature or who is pursuing an educational program leading to a baccalaureate degree in theology or divinity may not participate in this program.

(7) "Student with financial need" means a post-high school student in good standing at an accredited institution of higher learning who demonstrates to the institution the financial inability, either through the student's parents, family and/or personally, to meet the institutionally defined cost of education, and further demonstrates the ability and willingness to work in a student work study program, according to the stated needs of the institution. [I.C., § 33-4403, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 2, p. 198; am. 1999, ch. 329, § 38, p. 852; am. 2005, ch. 210, § 8, p. 626.]

OPINIONS OF ATTORNEY GENERAL

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Const., Art. IX, § 5. OAG 89-5 (but see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand

employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (but see 1990 amendment of chapter).

33-4404. Program purpose. — The purpose of the program is to expand employment opportunities for resident students. Employment may be in jobs at accredited institutions of higher education or in approved off-campus jobs. Students with financial need or educational need are to benefit through the program, and to do so while gaining work experience. Accordingly, efforts should be made whenever possible to provide job opportunities to students which relate to their academic and career goals.

Funds under this program may be used to pay up to eighty percent (80%) of earnings in on-campus jobs. Program funds may also be used to pay up to fifty percent (50%) of earnings for approved off-campus jobs where the jobs are directly related to the student's course of academic study and the employer pays fifty percent (50%) of the earnings. Program funds may also be used to fund up to ten percent (10%) of the total match required for the federal college work study program. Idaho program funds used as match

will be governed by federal college work study policy. However, institutional funds used for federal matching purposes shall not be less than the amount allocated for the prior year. [I.C., § 33-4404, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 3, p. 198.]

OPINIONS OF ATTORNEY GENERAL

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Const., Art. IX, § 5. OAG 89-5 (but see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand

employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (but see 1990 amendment of chapter).

33-4405. Program requirements. — To be eligible for the program, a person must be an Idaho resident student enrolled at an accredited institution of higher education at least half-time, as defined by the eligible institution, and be in good standing and demonstrate academic progress according to the institution's published standards of satisfactory academic progress for financial aid purposes.

The entire allocation for the program must be used to provide employment to students with documented financial need or educational need. Requirements for determination of financial need shall be the same as those for the federal college work study program. However, the financial aid office may adjust the federal financial need definition for unusual circumstances documented by the financial aid office. All application procedures for need-based programs, as defined by the institution, shall be followed.

Requirements for determination of educational need shall be formulated by each participating institution, subject to review by the state board of education; provided, that such requirements shall include a requirement that the work experience be related to the student's course of academic study. [I.C., § 33-4405, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 4, p. 198.]

33-4406. Limitations. — Students shall work no more than twenty (20) hours per week of employment under the program when classes are in session. Students are not to earn more than their award. However, in recognition of administrative realities, overearnings of not more than two hundred dollars (\$200) shall not constitute an overaward. Earnings in excess of two hundred dollars (\$200) over the need or award may not be paid from program funds and must be counted a resource in subsequent periods of enrollment. [I.C., § 33-4406, as added by 1989, ch. 124, § 1, p. 273.]

33-4407. Eligible types of employment. — Students may be employed either on-campus or off-campus at eligible accredited institutions of higher education, subject to the limitations expressed in this chapter. Employing organizations and agencies must be responsible and must have professional supervision. Discrimination by employers on the bases of sex,

race, color, age, religion, natural [national] origin, marital status, or handicap is prohibited.

Generally, employment which is allowable under the federal college work study program is also allowable under the Idaho program. This applies to both on-campus and off-campus employment, except that off-campus jobs for the program must be within Idaho. Likewise, employment which is not allowable under federal regulations is not eligible under the Idaho program.

Opinions from federal officials as to the legitimacy of a particular job under the federal college work study program may be assumed to be applicable to the Idaho program. However, approval to use Idaho program funds for particular jobs should not be construed as permission to institutions to use federal work-study funds to employ students in such jobs.

The financial aid office at the institution is responsible for ensuring that disbursements are made only for work performed in accordance with the written job description, with adequate supervision, and with proper documentation for the hours worked. [I.C., § 33-4407, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 5, p. 198.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "national" in the first paragraph was inserted by the compiler.

33-4408. Payment provisions. — Students shall be compensated on an hourly basis for actual time on the job at a rate commensurate with the duties and responsibilities of the job. Student employees must be paid at least monthly. Individual checks payable to the student, or similar instruments which may be cashed by students on their own endorsement without further restrictions, are required. With written permission from the student, the institution may credit earnings to the student's account to defray institutional educational costs. [I.C., § 33-4408, as added by 1989, ch. 124, § 1, p. 273.]

33-4409. Record keeping requirements. — The institution office responsible for student referral and placement must maintain written job descriptions which include rates of pay, or ranges of pay, for each position for which program funds are used. The job descriptions shall be reviewed and updated on an annual basis.

Written records shall be maintained for all employment referrals, indicating acknowledgment of the hiring party that the student has been given the position, or reasons why the student was not hired.

Written records showing the time worked must be maintained for all program employees, and must be signed by the student and supervisor, and submitted on at least a monthly basis. [I.C., § 33-4409, as added by 1989, ch. 124, § 1, p. 273.]

CHAPTER 45

SCHOOL ACCOUNTABILITY REPORT CARDS

SECTION.

33-4501. School accountability report card.

33-4502. School district requirements.

33-4501. School accountability report card. — In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the superintendent of public instruction shall by October 30, 1990, develop and present to the state board of education for adoption a statewide model school accountability report card.

(1) The model school accountability report card shall include, but is not limited to, assessment of the following school conditions:

- (a) Student progress toward meeting reading, writing, arithmetic and other academic goals as measured by a listing of scores on applicable statewide tests over at least a three (3) year period. High school reports should include both SAT and composite ACT scores for a similar period.
- (b) Progress toward reducing drop-out rates.
- (c) Estimated expenditures per student.
- (d) Progress toward reducing class size and teaching loads.
- (e) Reduction of teachers assigned outside their subject areas of competence.
- (f) Currency of textbooks and other instructional materials.
- (g) The availability of qualified personnel to provide counseling and other student support services.
- (h) Qualifications and utilization of substitute teachers.
- (i) Safety and adequacy of school facilities.
- (j) An explanation of the teacher evaluation process.
- (k) Classroom discipline and climate for learning.
- (l) Teacher and staff training.
- (m) Curriculum improvement.
- (n) Quality of school instruction.
- (o) Quality of school leadership.
- (p) School goals and progress toward those goals.
- (q) Achievement of any individual, team or class awards in district, state or national competition; i.e., a school wide "bragging sheet."

(2) In a district which chooses to prepare a district report card, compilation of report cards of individual schools into one (1) district report is a recommended format so long as individuality is maintained and comparisons can be made. A district report, or the report on the largest high school, if either is prepared in the district, shall include reproductions of the district's school profile for the latest two (2) years as prepared by the state department of education.

(3) There is hereby created in the department of education a task force on instructional improvement which shall consist of not more than eleven (11) members. The superintendent of public instruction shall appoint the members of the task force on instructional improvement. The members of the task force shall consist of practicing classroom teachers, school administra-

tors, parents, school board members, classified employees, students and education research specialists and provided that four (4) members of the task force shall consist of practicing classroom teachers. In developing the statewide model school accountability report card, the superintendent of public instruction shall consult with the task force on instructional improvement. Members of the task force shall be compensated as provided in section 59-509(b), Idaho Code. The task force shall terminate upon the adoption of a statewide model accountability report card. [I.C., § 33-4501, as added by 1990, ch. 149, § 1, p. 332; am. 1992, ch. 277, § 1, p. 853; am. 1996, ch. 176, § 1, p. 564.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

33-4502. School district requirements. — The board of trustees of each school district, including a specially chartered district, maintaining an elementary or secondary school may require each school to develop a school accountability report card by June 30, 1991 and implement the same by October 15, 1991.

(1) The school accountability report card may include, but is not limited to, the conditions listed in section 33-4501, Idaho Code. A school's accountability report card, if a card is required, shall be developed with input from teachers, parents and patrons.

(2) The board of trustees of each school district, including specially chartered districts, may require each school to annually issue a school accountability report card, publicize such report card and notify parents or guardians of each student that a copy will be provided upon request. [I.C., § 33-4502, as added by 1990, ch. 149, § 1, p. 332; am. 1996, ch. 176, § 2, p. 564.]

CHAPTER 46

IDAHO MINORITY AND "AT-RISK" STUDENT SCHOLARSHIP ACT

SECTION.

33-4601. Short title.

33-4602. Public policy.

33-4603. Purposes.

33-4604. Definitions.

33-4605. Eligibility — Maximum amounts — Conditions.

SECTION.

33-4606. Duties of board.

33-4607. Duties of participating institutions.

33-4608. Relationship of chapter to section 67-5909, Idaho Code.

33-4601. Short title. — This act shall be known and cited as the "Idaho Minority and 'At-Risk' Student Scholarship Act." [I.C., § 33-4601, as added by 1991, ch. 60, § 1, p. 137.]

33-4602. Public policy. — The legislature hereby recognizes and declares that substantial economic and social benefits accrue to the state because of an educated citizenry. The legislature further recognizes that certain talented students, because of their social, cultural and economic

circumstances are “at-risk” of failing to obtain the education necessary to realize their potential and that encouraging these at-risk students to enroll in Idaho postsecondary educational institutions is an important element for assuring the future prosperity of the state. [I.C., § 33-4602, as added by 1991, ch. 60, § 1, p. 137.]

33-4603. Purposes. — The purposes of this chapter are:

(1) To establish a state scholarship program for talented “at-risk” persons who will enroll in undergraduate academic and professional-technical programs in postsecondary institutions in the state; and

(2) To provide Idaho postsecondary institutions a tool to improve the recruitment and graduation rates of Idaho residents who are at-risk persons as defined in this chapter. [I.C., § 33-4603, as added by 1991, ch. 60, § 1, p. 137; am. 1999, ch. 329, § 21, p. 852.]

33-4604. Definitions. — As used in this chapter:

(1) “At-risk person” means any Idaho resident who meets three (3) or more of the following five (5) criteria:

(a) Is a potential first-generation college student;

(b) Is handicapped as defined in section 504 of the rehabilitation act, 29 U.S.C. section 794;

(c) Is a migrant farmworker or other seasonal farmworker or a dependent of a migrant farmworker or other seasonal farmworker;

(d) Is a minority person as defined in this chapter; or

(e) Has financial need as defined in this chapter.

(2) “Board” means the state board of education and the board of regents of the university of Idaho.

(3) “Eligible student” means any graduate of an accredited Idaho secondary school who is an at-risk person as defined in this chapter and who declares his intention to matriculate in an eligible postsecondary institution in the state of Idaho during the education year immediately following application for an award under this program.

(4) “Farmwork” means any agricultural activity, performed for either wages or personal subsistence, on a farm, ranch or similar establishment.

(5) “Financial need” means the extent of a person’s inability to meet the institutionally defined cost of education at an eligible postsecondary institution through parent, family and/or personal resources as determined under rules to be established by the state board of education.

(6) “Migrant farmworker” means a seasonal farmworker whose employment required travel that precluded the farmworker from returning to his permanent place of residence within the same day.

(7) “Minority person” means any Idaho resident who is a member of an ethnic group whose members historically have participated in postsecondary education at a rate lower than their occurrence in the population of the United States including, but not limited to, persons of native American, Afro-American, and Hispanic-American descent.

(8) “Potential first-generation college student” means a person neither of whose parents received a bachelor’s degree.

(9) "Seasonal farmworker" means a person who, within the past twenty-four (24) months, was employed for at least seventy-five (75) days in farmwork, and whose primary employment was in farmwork on a temporary or seasonal basis (that is, not as a constant year-round activity).

All terms not specifically defined in this chapter shall be defined as in sections 33-4303 through 33-4315, Idaho Code, governing the state of Idaho scholarship program. [I.C., § 33-4604, as added by 1991, ch. 60, § 1, p. 137.]

STATUTORY NOTES

Federal References. — Section 504 of the rehabilitation act, 29 U.S.C.S. § 794, was amended in 1992 to reference "person with a disability" instead of "person with a handicap." "Person with a disability" is defined at 29 U.S.C.S. § 705(20).

33-4605. Eligibility — Maximum amounts — Conditions. — The conditions governing this program and the size of awards shall be the same as those governing the state of Idaho scholarship program except as superseded by provisions of this chapter and as follows:

(1) Scholarships shall be awarded on the basis of high school records and other criteria to be established by the board. In the case of equally deserving applicants, priority shall be given to the applicant with the greatest financial need.

(2) The maximum number of scholarships in any given fiscal year shall be the amount of the fiscal year appropriation for this program divided by the amount of the maximum award for this program. [I.C., § 33-4605, as added by 1991, ch. 60, § 1, p. 137.]

33-4606. Duties of board. — The responsibilities of the board for this program shall be the same as for the state of Idaho scholarship program except as superseded by the provisions of this chapter and as follows:

(1) The board shall allocate funds for this program to participating institutions on the basis of total enrollment of at-risk persons.

(2) The board shall conduct audits and maintain fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of funds.

(3) The board shall promulgate rules and regulations as necessary to implement this program.

(4) The total of grant payments to a single recipient may not exceed the grant amount times the following number corresponding to the recipient's class standing as certified by the institution at the time of the initial award: freshman, four (4) years; sophomore, three (3) years; junior, two (2) years; and senior, one (1) year.

(5) The board each year shall compile a report on award recipients which shall include ethnic origin, sex, grade point average, class standing, and number of college credits completed.

(6) The board each year shall compile a report measuring the rates of minority student recruitment and retention at participating institutions. [I.C., § 33-4606, as added by 1991, ch. 60, § 1, p. 137.]

33-4607. Duties of participating institutions. — Participating postsecondary institutions shall be responsible for:

(1) Selecting recipients of awards.

(2) Determining procedures for payment of awards. [I.C., § 33-4607, as added by 1991, ch. 60, § 1, p. 137.]

33-4608. Relationship of chapter to section 67-5909, Idaho Code. — This act shall not be construed to be in violation of the provisions of section 67-5909, Idaho Code. [I.C., § 33-4608, as added by 1991, ch. 60, § 1, p. 137.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1991, chapter 60, which is compiled as §§ 33-4601 to 33-4608.

CHAPTER 47

YOUTH EDUCATION ACCOUNT

SECTION.

33-4701. Youth education fund established.

33-4702. Administration of the account.

SECTION.

33-4703. Advisory committee established.

33-4704. Annual report.

33-4701. Youth education fund established. — There is hereby established in the state treasury a fund to be known as the youth education fund. Moneys in the fund shall be used exclusively for the production and purchase of radio and television advertising designed to advise children of the risks and problems associated with the use of alcohol, drugs and tobacco. Moneys in the fund shall be comprised of appropriations, donations, contributions, gifts or grants from any source for purposes consistent with the provisions of this chapter. Moneys in the fund are subject to appropriation to the governor's commission on alcohol and drug abuse for expenditure pursuant to the provisions of this chapter.

The state board of education, the department of health and welfare, the Idaho state police and the transportation department may contribute funds and seek grants to the youth education fund.

Not less than seventy percent (70%) of the moneys in the fund shall be used each year for advertising pertaining to alcohol and alcohol abuse. [I.C., § 33-4701, as added by 1992, ch. 137, § 1, p. 426; am. 2000, ch. 469, § 83, p. 1450.]

33-4702. Administration of the account. — The governor's commission on alcohol and drug abuse is charged with the administration of the youth education account and is hereby authorized to enter into contracts for the production of radio and television advertising and for the purchase of broadcast time utilizing funds derived exclusively from the account; but no elected officer or candidate for elective office may participate in the advertising. Broadcast time shall be purchased throughout the state, with the

extent and concentration of time purchased to be determined by the population of the area to be reached. [I.C., § 33-4702, as added by 1992, ch. 137, § 1, p. 426.]

33-4703. Advisory committee established. — (1) The youth education account advisory committee is hereby established. The committee shall be comprised of four (4) members, two (2) members to be appointed by the governor and two (2) members to be appointed by the superintendent of public instruction. The term of office for each committee member shall be two (2) years. Each member of the committee shall be a citizen of the United States and a bona fide resident of this state and shall have broadcast advertising experience. Vacancies in any unexpired term shall be filled by the original appointing authority for the remainder of the unexpired term. In the performance of their official duties each committee member shall be compensated as provided in section 59-509(b), Idaho Code.

(2) The committee shall prepare a yearly advertising plan, shall produce or review proposed advertising and shall provide advice and assistance to the governor’s commission on alcohol and drug abuse on the administration of the youth education account.

(3) Neither advisory committee members nor their employers may contract for services to be paid with moneys from the youth education account. [I.C., § 33-4703, as added by 1992, ch. 137, § 1, p. 426.]

33-4704. Annual report. — The governor’s commission on alcohol and drug abuse shall annually submit a report to the governor, the superintendent of public instruction and the legislature on the source of moneys deposited into the account and the purposes for which disbursements from the account have been made. [I.C., § 33-4704, as added by 1992, ch. 137, § 1, p. 426.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

CHAPTER 48

IDAHO EDUCATIONAL TECHNOLOGY INITIATIVE

| SECTION. | SECTION. |
|---|---|
| 33-4801. Short title. | 33-4806. Public school technology grants. |
| 33-4802. Findings. | 33-4807. Evaluations and audits. |
| 33-4803. Definitions. | 33-4808. Severability. |
| 33-4804. State council for technology in learning created — Membership. | 33-4809. Higher education information technology committee. |
| 33-4805. Responsibilities of the council — Council staff. | 33-4810. Public education information technology committee. |

33-4801. Short title. — This chapter shall be known and may be cited as the “Idaho Educational Technology Initiative of 1994.” [I.C., § 33-4801, as added by 1994, ch. 229, § 1, p. 716.]

STATUTORY NOTES

Compiler's Notes. — Two 1994 acts, chapters 229 and 234, purported to create a new Chapter 48 in Title 33. Chapter 229 was compiled as Title 33, Chapter 48 (§§ 33-4801 — 33-4808) while chapter 234 was designated

by the compiler as Title 33, Chapter [49] 48 (§§ [33-4901] 33-4801 — [33-4906] 33-4806). The redesignation of the provisions enacted by S.L. 1994, ch. 234 was made permanent by S.L. 2005, ch. 25.

33-4802. Findings. — The legislature hereby finds, determines and declares that the state of Idaho recognizes the importance of applying technology to meet the public need for an improved, thorough and seamless public education system for elementary and secondary education, education of the hearing or visually impaired at the Idaho school for the deaf and blind, post-secondary and higher education and public libraries. [I.C., § 33-4802, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 1, p. 172; am. 1999, ch. 327, § 1, p. 835.]

33-4803. Definitions. — As used in this chapter:

(1) "Educational segments" are, individually, the public elementary and secondary school system, the Idaho school for the deaf and blind, the professional-technical education system, the commission for libraries, the state historical society, Idaho public television, the community colleges, the four-year colleges and universities, the state department of education and the office of the state board of education.

(2) "Libraries" means district, city, school/community libraries, and the commission for libraries as described in chapters 25, 26 and 27, title 33, Idaho Code.

(3) "Technology" means all present and future forms of computer hardware, computer software and services used or required for automated data processing, computer-related office automation or telecommunications.

(4) "Telecommunications" means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance. [I.C., § 33-4803, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 2, p. 172; am. 1999, ch. 327, § 2, p. 835; am. 1999, ch. 329, § 22, p. 852; am. 2006, ch. 235, § 30, p. 701.]

STATUTORY NOTES

Cross References. — Commission for libraries, § 33-2501 et seq.

Idaho school for the deaf and the blind, §§ 33-3401.

Amendments. — This section was amended by two 1999 acts — ch. 327, § 2 and ch. 329, § 22, both effective July 1, 1999, which do not appear to conflict and have been compiled together.

The 1999 amendment, by ch. 327, § 2, deleted former subsections (2) and (3), redesignated former subsections (4) and (5) as subsections (2) and (3) and added subsection (4); in subsection (1), inserted "the state library, the state historical society, Idaho public

television" following "the vocational education system," inserted "the state department of education and the office of the state board of education" following "four-year colleges and universities"; in subsection (2), inserted "and the state library" following "community libraries," inserted "25" preceding "26"; and rewrote subsection (3).

The 1999 amendment, by ch. 329, § 22, in subsection (1), substituted "professional-technical" for "vocational-technical".

The 2006 amendment, by ch. 235, in subsections (1) and (2), substituted "commission for libraries" for "state library."

33-4804. State council for technology in learning created — Membership. — (1) There is hereby created and established the state council for technology in learning under the state board of education, referred to herein as the council.

(2) The council shall consist of fourteen (14) members who shall be appointed as follows:

(a) The superintendent of public instruction, or his designee. The superintendent of public instruction shall appoint one (1) practicing public school administrator as a member.

(b) The governor shall appoint two (2) business/private sector representatives with experience in applications of technology, and one (1) person who is a member of a local school board as provided in chapter 5, title 33, Idaho Code. Such local school board member shall be appointed by the governor from a list of not less than three (3) nor more than five (5) names submitted by the statewide association representing local school board members.

(c) The president pro tempore of the Idaho senate shall appoint two (2) members of the senate, one (1) from each of the two (2) largest political parties.

(d) The speaker of the house of representatives shall appoint two (2) members of the house of representatives, one (1) from each of the two (2) largest political parties.

(e) A representative of the higher education information technology committee as provided in section 33-4809, Idaho Code, and a public school teacher representative of the public education information technology committee as provided in section 33-4810, Idaho Code.

(f) The state board of education shall appoint one (1) of its members as a member of the council. In addition, the state board of education shall appoint one (1) member who is currently serving as president of an Idaho public college or university. The executive director of the state board of education as appointed pursuant to section 33-102A, Idaho Code, shall serve as a member of the council.

(g) The state board of education shall select from among the members of the council a chairman who shall call and conduct the meetings of the council pursuant to policies adopted by the council and approved by the state board of education.

(3) At the first meeting of the council after the effective date of this act, the members shall draw by lottery to determine one-half (1/2) of the members to serve an initial term of two (2) years and one-half (1/2) of the members to serve an initial term of four (4) years. Thereafter, all members shall serve a term of four (4) years but may be removed prior to the expiration of a term at the pleasure of the appointing official. Notwithstanding any other provision of law to the contrary, any member of the council may succeed himself in appointment.

(4) Members of the council shall receive compensation as provided in section 59-509(b), Idaho Code. [I.C., § 33-4804, as added by 1994, ch. 229, § 1, p. 716; am. 1999, ch. 327, § 3, p. 835.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

effective date of this act” in subsection (3) was added by S.L. 1999, chapter 327, which was effective July 1, 1999.

Compiler's Notes. — The phrase “the ef-

33-4805. Responsibilities of the council — Council staff. —

(1) Staff support for the council shall be drawn from the educational segments as recommended by the council and approved by the state board of education. The legislative intent is to provide broad representation of the various educational segments with the council staff.

(2) The council shall have the following responsibilities:

(a) Develop and maintain a statewide education technology plan to provide seamless education in Idaho. Such plan shall be subject to annual review and approval by the state board of education.

(b) Make recommendations to the state board of education on educational technology and telecommunications plans, policies, programs and activities for all educational segments.

(c) Subject to the approval of the state board of education, administer and develop standards and criteria for the public school technology grants program provided for in section 33-4806, Idaho Code.

(d) Ensure that the policies set by the information technology resource management council are followed in accordance with sections 67-5745B and 67-5745C, Idaho Code, in implementing educational technology programs pursuant to this chapter.

(e) Collaborate with all educational segments, as well as with professional education associations and businesses, in recommending priorities for funding and in identifying needs for technology use in education.

(f) Recommend to the state board of education, standards and procedures for the administration of this act, including, but not limited to, standards for technology-based resources, projects, programs, practices or products to be adopted or adapted, and standards and criteria by which to evaluate the technology-based programs. In addition, the council shall recommend exemplary programs, practices, or products based on the criteria established in this subsection.

(g) Recommend priorities for uses of educational technology.

(h) Work with representatives of the governing bodies of the educational segments to develop recommendations or strategies for the coordination, administration, and evaluation of educational technology programs and resources.

(i) Work with representatives of the governing bodies of the educational segments to identify strategies to coordinate statewide voice, video, and data telecommunications systems that may be accessed by the educational segments.

(j) To review, evaluate and build upon the educational technology projects in public schools funded through other state initiatives.

(k) To form such subcommittees or task forces as it deems necessary to review matters pertaining to a particular educational segment or to any other issues before the council. [I.C., § 33-4805, as added by 1994, ch. 229, § 1, p. 716; am. 1999, ch. 327, § 4, p. 835.]

STATUTORY NOTES

Compiler's Notes. — The words "this act", chapter 229, which is compiled as §§ 33-4801 used in paragraph (2)(f), refer to S.L. 1994, to 33-4808.

33-4806. Public school technology grants. — There is hereby established the public school technology grant program, which shall make available grants for schools to provide Idaho classrooms, including classrooms at the Idaho school for the deaf and blind, with the equipment and resources necessary to integrate information age technology with instruction and to further connect those classrooms with external telecommunications services. Grant applications shall include a project plan that describes proposed equipment and software purchases; how the proposed equipment and software will be used effectively in the classroom; provision for training teachers to make optimal use of the technology; provision for local matching funds as prescribed by the council; and other elements as prescribed by the council. [I.C., § 33-4806, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 3, p. 172.]

STATUTORY NOTES

Cross References. — Idaho school for the deaf and the blind, § 33-3401.

33-4807. Evaluations and audits. — The legislative services office shall, from time to time as directed by the legislature, evaluate and audit the relative impact, costs and benefits of each of the educational technology programs conducted pursuant to this chapter. The state board of education shall report to the legislature and the governor each year on or before October 1 as to the relative impact, cost and benefit of the educational technology program conducted pursuant to this chapter. [I.C., § 33-4807, as added by 1994, ch. 229, § 1, p. 716; am. 1996, ch. 45, § 1, p. 118; am. 1999, ch. 327, § 5, p. 835.]

33-4808. Severability. — The provisions of this chapter are hereby declared severable, and in the event that any word, phrase, sentence, clause, paragraph or section of this chapter be determined by a court of competent jurisdiction to be invalid for any reason, such partial invalidity shall not affect the validity of the remainder of this chapter. [I.C., § 33-4808, as added by 1994, ch. 229, § 1, p. 716.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1994, ch. 229 declared an emergency. Approved March 30, 1994.

33-4809. Higher education information technology committee. — The state board of education shall establish a standing subcommittee of the council to be known as the higher education information technology com-

mittee, the purpose of which is to advise the council regarding postsecondary and other education technology and telecommunications issues pertinent to the purposes of this chapter that affect educational segments not including primary and secondary education. [I.C., § 33-4809, as added by 1999, ch. 327, § 6, p. 835.]

33-4810. Public education information technology committee. —

The state board of education shall, upon consideration of the recommendations of the superintendent of public instruction, establish a standing subcommittee of the council to be known as the public education information technology committee, the purpose of which is to advise the council regarding only primary and secondary education technology and telecommunications issues pertinent to this chapter. At a minimum, and not by way of limitation, the public education information technology committee membership shall include one (1) vocational education/applied technology teacher, one (1) public librarian, one (1) public school media specialist, one (1) elementary public school teacher, and one (1) secondary public school teacher. [I.C., § 33-4810, as added by 1999, ch. 327, § 7, p. 835.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

CHAPTER 49

MOTORCYCLE SAFETY PROGRAM

SECTION.

33-4901. Cooperation between departments.
33-4902. Motorcycle safety program.
33-4903. Implementing authority.

SECTION.

33-4904. Motorcycle safety program fund.
33-4905. Advisory committee.
33-4906. Annual report on the program.

33-4901. Cooperation between departments. — In conjunction with its supervision of traffic on public highways, the Idaho transportation department is directed to cooperate with the department of education in its establishment of a motorcycle rider safety program for the state of Idaho. [I.C., § 33-4801, as added by 1994, ch. 234, § 10, p. 728; am. and redesignig. 2005, ch. 25, § 51, p. 82.]

STATUTORY NOTES

Compiler's Notes. — Two 1994 acts, chapters 229 and 234, purported to create a new Chapter 48 in Title 33. Chapter 229 has been compiled as Title 33, chapter 48 (§§ 33-4801 — 33-4808) while chapter 234 was redesignated by the compiler as Title 33, chapter [49] 48 (§§ [33-4901] 33-4801 — [33-4906] 33-

4806). The redesignation of the provisions enacted by S.L. 1994, ch. 234 was made permanent by S.L. 2005, ch. 25.

Effective Dates. — Section 11 of S.L. 1994, ch. 234 provided that this act shall be in full force and effect on and after September 1, 1994.

33-4902. Motorcycle safety program. — (1) The department of education shall develop standards for, establish and administer the Idaho motorcycle safety program.

(2) The department of education shall establish standards for the motorcycle rider training course, including standards for course curriculum and student evaluation and testing, and shall meet or exceed established national standards for motorcycle rider training courses in effect as of September 1, 1994.

(3) The program shall include activities to increase motorcyclists' alcohol and drug effects awareness, motorcycle rider improvement efforts, program promotion activities, and other efforts to enhance motorcycle safety through education, including enhancement of public awareness of motorcycles.

(4) The superintendent of public instruction shall appoint a program coordinator to oversee and direct the program.

(5) The department of education shall establish standards for the training and approval of motorcycle rider training instructors and skills examiners which shall meet or exceed established national standards for such instructors and skills examiners in effect as of September 1, 1994. [I.C., § 33-4802, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 52, p. 82.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

33-4903. Implementing authority. — (1) The department of education shall adopt rules which are necessary to carry out the motorcycle safety program.

(2) The department of education may enter into contracts with public or private entities for course delivery and for the provision of services or materials necessary for administration and implementation of the program.

(3) The department of education may offer motorcycle rider training courses directly and may approve courses offered by public or private entities as authorized program courses if they are administered and taught in full compliance with standards established for the state program.

(4) The department of education may establish reasonable enrollment fees to be charged for persons who participate in a motorcycle rider training course.

(5) The department of education may utilize available program funds to defray expenses in offering motorcycle rider training courses and may reimburse entities which offer approved courses for the expenses incurred in offering the courses in order to minimize any course enrollment fee charged to the students. [I.C., § 33-4803, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 53, p. 82.]

33-4904. Motorcycle safety program fund. — (1) The motorcycle safety program fund is established in the state treasury and appropriated on a continual basis to the department of education which shall administer the

moneys. Money in the fund shall only be used for administration and implementation of the program, including reimbursement of entities which offer approved motorcycle rider training courses.

(2) At the end of each fiscal year, moneys remaining in the motorcycle safety program fund shall be retained in said fund and shall not revert to any other general fund. The interest and income earned on money in the fund, after deducting any applicable charges, shall be credited to and remain in the motorcycle safety program fund.

(3) Revenue credited to the fund shall include one dollar (\$1.00) of each fee for a class A, B, C or D driver's license as provided in section 49-306, Idaho Code.

(4) Revenue credited to the fund shall include amounts collected for each motorcycle safety program fee imposed pursuant to section 49-453, Idaho Code. [I.C., § 33-4804, as added by 1994, ch. 234, § 10, p. 728; am. and redesisg. 1998, ch. 110, § 4, p. 375; am. 1999, ch. 81, § 1, p. 237; am. 2005, ch. 308, § 1, p. 960.]

STATUTORY NOTES

Compiler's Notes. — This section was enacted as § 33-4804 and was redesignated as § 33-4904 as another § 33-4804 was enacted by S.L. 1994, ch. 229. The redesignation was made permanent by S.L. 1998, ch. 110.

33-4905. Advisory committee. — The superintendent of public instruction shall establish a program advisory committee consisting of five (5) persons representing various interests in motorcycle safety including, but not limited to, motorcycle riding enthusiasts, dealers and law enforcement personnel. Committee members shall advise the program coordinator in developing, establishing and maintaining the program. The committee shall monitor program implementation and report to the superintendent as necessary with recommendations. Members of the committee shall serve without compensation but may be reimbursed for their reasonable expenses while engaged in committee business. [I.C., § 33-4805, as added by 1994, ch. 234, § 10, p. 728; am. and redesisg. 2005, ch. 25, § 54, p. 82.]

STATUTORY NOTES

Cross References. — State superintendent of public instructions, § 67-1501 et seq.

33-4906. Annual report on the program. — The department of education shall prepare a public report annually. The report shall be completed with the assistance of the program coordinator and the program advisory committee. The report shall include the number and location of various courses offered, the number of instructors approved, the number of students trained in various courses, other information about program implementation as deemed appropriate, and an assessment of the overall impact of the program on motorcycle safety in the state. The report shall also provide a complete accounting of revenue receipts of the motorcycle safety program fund and of all moneys expended under the program. [I.C.,

§ 33-4806, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 55, p. 82.]

STATUTORY NOTES

Cross References. — Motorcycles safety program fund, § 33-4904.

Effective Dates. — Section 11 of S.L.

1994, ch. 234 provided this act shall be in full force and effect on and after September 1, 1994.

CHAPTER 50

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

SECTION.

33-5001. Short title.

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SECTION.

tions on management, investment or purpose.

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33-5010. Uniformity of application and construction.

OFFICIAL COMMENT

PREFATORY NOTE

Reasons for Revision. The Uniform Prudent Management of Institutional Funds Act (UPMIFA) replaces the Uniform Management of Institutional Funds Act (UMIFA). The National Conference of Commissioners on Uniform State Laws approved UMIFA in 1972, and 47 jurisdictions have enacted the act. UMIFA provided guidance and authority to charitable organizations within its scope concerning the management and investment of funds held by those organizations. UMIFA provided endowment spending rules that did not depend on trust accounting principles of income and principal, and UMIFA permitted the release of restrictions on the use or management of funds under certain circumstances. The changes UMIFA made to the law permitted charitable organizations to use modern investment techniques such as total-return investing and to determine endowment fund spending based on spending rates rather than on determinations of "income" and "principal."

UMIFA was drafted almost 35 years ago, and portions of it are now out of date. The prudence standards in UMIFA have provided useful guidance, but prudence norms evolve over time. The new Act provides modern articulations of the prudence standards for the management and investment of charitable

funds and for endowment spending. The Uniform Prudent Investor Act (UPIA), an Act promulgated in 1994 and already enacted in 43 jurisdictions, served as a model for many of the revisions. UPIA updates rules on investment decision making for trusts, including charitable trusts, and imposes additional duties on trustees for the protection of beneficiaries. UPMIFA applies these rules and duties to charities organized as nonprofit corporations. UPMIFA does not apply to trusts managed by corporate and other fiduciaries that are not charities, because UPIA provides management and investment standards for those trusts.

In applying principles based on UPIA to charities organized as nonprofit corporations, UPMIFA combines the approaches taken by UPIA and by the Revised Model Nonprofit Corporation Act (RMNCA). UPMIFA reflects the fact that standards for managing and investing institutional funds are and should be the same regardless of whether a charitable organization is organized as a trust, a nonprofit corporation, or some other entity. See Bevis Longstreth, *Modern Investment Management and the Prudent Man Rule* 7 (1986) (stating "[t]he modern paradigm of prudence applies to all fiduciaries who are subject to some version of the prudent man rule, whether under ERISA, the private foun-

dation provisions of the Code, UMIFA, other state statutes, or the common law.”); Harvey P. Dale, *Nonprofit Directors and Officers — Duties and Liabilities for Investment Decisions*, 1994 N.Y.U. Conf. Tax Plan. 501(c)(3) Org’s. Ch. 4.

UPMIFA provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations, and UPMIFA imposes additional duties on those who manage and invest charitable funds. These duties provide additional protections for charities and also protect the interests of donors who want to see their contributions used wisely.

UPMIFA modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds and to give institutions the ability to cope more easily with fluctuations in the value of the endowment.

Finally, UPMIFA updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds. These provisions derive from the approach taken in the Uniform Trust Code (UTC) for modifying charitable trusts. Like the UTC provisions, UPMIFA’s modification rules preserve the historic position of the attorneys general in most states as the overseers of charities.

As under UMIFA, the new Act applies to charities organized as charitable trusts, as nonprofit corporations, or in some other manner, but the rules do not apply to funds managed by trustees that are not charities. Thus, the Act does not apply to trusts managed by corporate or individual trustees, but the Act does apply to trusts managed by charities.

Prudent Management and Investment.

UMIFA applied the 1972 prudence standard to investment decision making. In contrast, UPMIFA will give charities updated and more useful guidance by incorporating language from UPIA, modified to fit the special needs of charities. The revised Act spells out more of the factors a charity should consider in making investment decisions, thereby imposing a modern, well accepted, prudence standard based on UPIA.

Among the expressly enumerated prudence factors in UPMIFA is “the preservation of the endowment fund,” a standard not articulated in UMIFA.

In addition to identifying factors that a charity must consider in making management and investment decisions, UPMIFA requires a charity and those who manage and invest its funds to:

1. Give primary consideration to donor intent as expressed in a gift instrument,
2. Act in good faith, with the care an

ordinarily prudent person would exercise,

3. Incur only reasonable costs in investing and managing charitable funds,
4. Make a reasonable effort to verify relevant facts,
5. Make decisions about each asset in the context of the portfolio of investments, as part of an overall investment strategy,
6. Diversify investments unless due to special circumstances, the purposes of the fund are better served without diversification,
7. Dispose of unsuitable assets, and
8. In general, develop an investment strategy appropriate for the fund and the charity.

UMIFA did not articulate these requirements.

Thus, UPMIFA strengthens the rules governing management and investment decision making by charities and provides more guidance for those who manage and invest the funds.

Donor Intent with Respect to Endowments. UPMIFA improves the protection of donor intent with respect to expenditures from endowments. When a donor expresses intent clearly in a written gift instrument, the Act requires that the charity follow the donor’s instructions. When a donor’s intent is not so expressed, UPMIFA directs the charity to spend an amount that is prudent, consistent with the purposes of the fund, relevant economic factors, and the donor’s intent that the fund continue in perpetuity. This approach allows the charity to give effect to donor intent, protect its endowment, assure generational equity, and use the endowment to support the purposes for which the endowment was created.

Retroactivity. Like UMIFA, UPIA, the Uniform Principal and Income Act of 1961, and the Uniform Principal and Income Act of 1997, UPMIFA applies retroactively to institutional funds created before and prospectively to institutional funds created after enactment of the statute. Regarding the considerations motivating this treatment of the issues, see the comment to Section 4.

Endowment Spending. UPMIFA improves the endowment spending rule by eliminating the concept of historic dollar value and providing better guidance regarding the operation of the prudence standard. Under UMIFA a charity can spend amounts above historic dollar value that the charity determines to be prudent. The Act directs the charity to focus on the purposes and needs of the charity rather than on the purposes and perpetual nature of the fund. Amounts below historic dollar value cannot be spent. The Drafting Committee concluded that this en-

dowment spending rule created numerous problems and that restructuring the rule would benefit charities, their donors, and the public. The problems include:

1. Historic dollar value fixes valuation at a moment in time, and that moment is arbitrary. If a donor provides for a gift in the donor's will, the date of valuation for the gift will likely be the donor's date of death. (UMIFA left uncertain what the appropriate date for valuing a testamentary gift was.) The determination of historic dollar value can vary significantly depending upon when in the market cycle the donor dies. In addition, the fund may be below historic dollar value at the time the charity receives the gift if the value of the asset declines between the date of the donor's death and the date the asset is actually distributed to the charity from the estate.

2. After a fund has been in existence for a number of years, historic dollar value may become meaningless. Assuming reasonable long term investment success, the value of the typical fund will be well above historic dollar value, and historic dollar value will no longer represent the purchasing power of the original gift. Without better guidance on spending the increase in value of the fund, historic dollar value does not provide adequate protection for the fund. If a charity views the restriction on spending simply as a direction to preserve historic dollar value, the charity may spend more than it should.

3. The Act does not provide clear answers to questions a charity faces when the value of an endowment fund drops below historic dollar value. A fund that is so encumbered is commonly called an "underwater" fund. Conflicting advice regarding whether an organization could spend from an underwater fund has led to difficulties for those managing charities. If a charity concluded that it could continue to spend trust accounting income until a fund regained its historic dollar value, the charity might invest for income rather than on a total-return basis. Thus, the historic dollar value rule can cause inappropriate distortions in investment policy and can ultimately lead to a decline in a fund's real value. If, instead, a charity with an underwater fund continues to invest for growth, the charity may be unable to spend anything from an underwater endowment fund for several years. The inability of a charity to spend anything from an endowment is likely to be contrary to donor intent, which is to provide current benefits to the charity.

The Drafting Committee concluded that providing clearly articulated guidance on the prudence rule for spending from an endowment fund, with emphasis on the permanent

nature of the fund, would provide the best protection of the purchasing power of endowment funds.

Presumption of Imprudence. UPMIFA includes as an optional provision a presumption of imprudence if a charity spends more than seven percent of an endowment fund in any one year. The presumption is meant to protect against spending an endowment too quickly. Although the Drafting Committee believes that the prudence standard of UPMIFA provides appropriate and adequate protection for endowments, the Committee provided the option for states that want to include a mechanical guideline in the statute. A major drawback to any statutory percentage is that it is unresponsive to changes in the rate of inflation or deflation.

Modification of Restrictions on Charitable Funds. UPMIFA clarifies that the doctrines of cy pres and deviation apply to funds held by nonprofit corporations as well as to funds held by charitable trusts. Courts have applied trust law rules to nonprofit corporations in the past, but the Drafting Committee believed that statutory authority for applying these principles to nonprofit corporations would be helpful. UMIFA permitted release of restrictions but left the application of cy pres uncertain. Under UPMIFA, as under trust law, the court will determine whether and how to apply cy pres or deviation and the attorney general will receive notice and have the opportunity to participate in the proceeding. The one addition to existing law is that UPMIFA gives a charity the authority to modify a restriction on a fund that is both old and small. For these funds, the expense of a trip to court will often be prohibitive. By permitting a charity to make an appropriate modification, money is saved for the charitable purposes of the charity. Even with respect to small, old funds, however, the charity must notify the attorney general of the charity's intended action. Of course, if the attorney general has concerns, he or she can seek the agreement of the charity to change or abandon the modification, and if that fails, can commence a court action to enjoin it. Thus, in all types of modification the attorney general continues to be the protector both of the donor's intent and of the public's interest in charitable funds.

Other Organizational Law. For matters not governed by UPMIFA, a charitable organization will continue to be governed by rules applicable to charitable trusts, if it is organized as a trust, or rules applicable to nonprofit corporations, if it is organized as a nonprofit corporation.

Relation to Trust Law. Although UPMIFA applies a number of rules from trust law to institutions organized as nonprofit corporations, in two respects UPMIFA creates

rules that do not exist under the common law applicable to trusts. The endowment spending rule of Section 4 and the provision for modifying a small, old fund in subsection (d) of Section 6 have no counterparts in the common law or the UTC. The Drafting Com-

mittee believes that these rules could be useful to charities organized as trusts, and the Committee recommends conforming amendments to the UTC and the Principal and Income Act to incorporate these changes into trust law.

33-5001. Short title. — This chapter shall be known and may be cited as the “Uniform Prudent Management of Institutional Funds Act.” [I.C., § 33-5001, as added by 2007, ch. 173, § 2, p. 512.]

STATUTORY NOTES

Prior Laws. — Former chapter 50 of Title 33, which comprised the following sections, was repealed by S.L. 2007, ch. 173, § 1.

33-5001. Definitions. [I.C., § 33-5001, as added by 1996, ch. 405, § 1, p. 1345.]

33-5002. Appropriation of appreciation. [I.C., § 33-5002, as added by 1996, ch. 405, § 1, p. 1345.]

33-5003. Rule of construction. [I.C., § 33-5003, as added by 1996, ch. 405, § 1, p. 1345.]

33-5004. Investment of authority. [I.C., § 33-5004, as added by 1996, ch. 405, § 1, p. 1345.]

33-5005. Delegation of investment management. [I.C., § 33-5005, as added by 1996, ch. 405, § 1, p. 1345.]

33-5006. Standard of conduct. [I.C., § 33-5006, as added by 1996, ch. 405, § 1, p. 1345.]

33-5007. Release of restrictions on use or investment. [I.C., § 33-5007, as added by 1996, ch. 405, § 1, p. 1345.]

33-5008. Short title. [I.C., § 33-5008, as added by 1996, ch. 405, § 1, p. 1345.]

33-5002. Definitions. — In this chapter:

(1) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) “Endowment fund” means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use nor endowment funds managed pursuant to chapter 7, title 57, Idaho Code.

(3) “Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) “Institution” means:

(a) A person, other than an individual, organized and operated exclusively for charitable purposes;

(b) A government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(c) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) “Institutional fund” means a fund held by an institution exclusively for charitable purposes. The term does not include:

(a) Program related assets;

(b) A fund held for an institution by a trustee that is not an institution; or

(c) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(7) "Program related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [I.C., § 33-5002, as added by 2007, ch. 173, § 2, p. 512.]

OFFICIAL COMMENT

Subsection (1). Charitable Purpose. The definition of charitable purpose follows that of UTC § 405 and Restatement (Third) of Trusts § 28 (2003). This long-familiar standard derives from the English Statute of Charitable Uses, enacted in 1601.

Some 17 states have created statutory definitions of charitable purpose for various purposes. *See, e.g.*, 10 PA. CONS. STAT. § 162.3 (2005) (defining charitable purpose within the Solicitation of Funds for Charitable Purposes Act to include "humane," "patriotic," social welfare and advocacy," and "civic" purposes). The definition in subsection (1) applies for purposes of this Act and does not affect other definitions of charitable purpose.

Subsection (2). Endowment Fund. An endowment fund is an institutional fund or a part of an institutional fund that is not wholly expendable by the institution on a current basis. A restriction that makes a fund an endowment fund arises from the terms of a gift instrument. If an institution has more than one endowment fund, under Section 3 [§ 33-5003] the institution can manage and invest some or all endowment funds together. Section 4 and Section 6 [§ 33-5004 and § 33-5006] must be applied to individual funds and cannot be applied to a group of funds that may be managed collectively for investment purposes.

Board-designated funds are institutional funds but not endowment funds. The rules on expenditures and modification of restrictions in this Act do not apply to restrictions that an institution places on an otherwise unrestricted fund that the institution holds for its own benefit. The institution may be able to change these restrictions itself, subject to internal rules and to the fiduciary duties that apply to those that manage the institution.

If an institution transfers assets to another institution, subject to the restriction that the

other institution hold the assets as an endowment, then the second institution will hold the assets as an endowment fund.

Subsection (3). Gift Instrument. The term gift instrument refers to the records that establish the terms of a gift and may consist of more than one document. The definition clarifies that the only legally binding restrictions on a gift are the terms set forth in writing.

As used in this definition, "record" is an expansive concept and means a writing in any form, including electronic. The term includes a will, deed, grant, conveyance, agreement, or memorandum, and also includes writings that do not have a donative purpose. For example, under some circumstances the by-laws of the institution, minutes of the board of directors, or canceled checks could be a gift instrument or be one of several records constituting a gift instrument. Although the term can include any of these records, a record will only become a gift instrument if both the donor and the institution were or should have been aware of its terms when the donor made the gift. For example, if a donor sends a contribution to an institution for its general purposes, then the articles of incorporation may be used to clarify those purposes. If, in contrast, the donor sends a letter explaining that the institution should use the contribution for its "educational projects concerning teenage depression," then any funds received in response must be used for that purpose and not for broader purposes otherwise permissible under the articles of incorporation.

Solicitation materials may constitute a gift instrument. For example, a solicitation that suggests in writing that any gifts received pursuant to the solicitation will be held as an endowment may be integrated with other writings and may be considered part of the gift instrument. Whether the terms of the

solicitation become part of the gift instrument will depend upon the circumstances, including whether a subsequent writing superseded the terms of the solicitation. Each gift received in response to a solicitation will be subject to any restrictions indicated in the gift instrument pertaining to that gift. For example, if an initial gift establishes an endowment fund, and the charity then solicits additional gifts "to be held as part of the Charity X Endowment Fund," those additional gifts will each be subject to the restriction that the gifts be held as part of that endowment fund.

The term gift instrument includes matching funds provided by an employer or some other person. Whether matching funds are treated as part of the endowment fund or otherwise will depend on the terms of the matching gift.

The term gift instrument also includes an appropriation by a legislature or other public or governmental body for the benefit of an institution.

Subsection (4). Institution. The Act applies generally to institutions organized and operated exclusively for charitable purposes. The term includes charitable organizations created as nonprofit corporations, unincorporated associations, governmental subdivisions or agencies, or any form of entity, however organized, that is organized and operated exclusively for charitable purposes. The term includes a trust organized and operated exclusively for charitable purposes, but only if a charity acts as trustee. This approach leaves unchanged the coverage of UMIFA. The exclusion of "individual" from the definition of institution is not intended to exclude a corporation sole.

Although UPMIFA does not apply to all charitable trusts, many of UPMIFA's provisions derive from trust law. Prudent investor standards apply to trustees of charitable trusts in states that have adopted UPIA. Trustees of charitable trusts can use the doctrines of cy pres and deviation to modify trust provisions, and the UTC includes a number of modification provisions. The Uniform Principal and Income Act permits allocation between principal and income to facilitate total-return investing. Charitable trusts not included in UPMIFA, primarily those managed by corporate trustees and individuals, will lose the benefits of UPMIFA's endowment spending rule and the provision permitting a charity to apply cy pres, without court supervision, for modifications to a small, old fund. Enacting jurisdictions may choose to incorporate these rules into existing trust statutes to provide the benefits to charitable funds managed by corporate trustees.

The definition of institution includes governmental organizations that hold funds exclusively for the purposes listed in the defini-

tion. A governmental entity created by state law may fall outside the definition on account of the form of organization under which the state created it. Because state arrangements are so varied, creating a definition that encompasses all charitable entities created by states is not feasible. States should consider applying the core principles of UPMIFA to such governmental institutions. For example, the control over a state university may be held by a State Board of Regents. In that situation, the state may have created a governing structure by statute or in the state constitution so that the university is, in effect, privately chartered. The Drafting Committee does not intend to exclude these universities from the definition of institution, but additional state legislation may be necessary to address particular situations.

Subsection (5). Institutional Fund. The term institutional fund includes any fund held by an institution for charitable purposes, whether the fund is expendable currently or subject to restrictions. The term does not include a fund held by a trustee that is not an institution.

Some institutions combine assets from multiple funds for investment purposes, and some institutions invest funds from different institutions in a common fund. Typically each fund is assigned units representing the share value of the individual fund. The assets are invested collectively, permitting more efficient investment and improved diversification of the overall portfolio. The collective fund makes annual distributions to the individual funds based on the units held by each fund. For purposes of Section 3 [§ 33-5003] (and Section 5 [§ 33-5005]), the collective fund is considered one institutional fund. Section 4 and Section 6 [§ 33-5004 and § 33-5006] apply to each fund individually and not to the collective fund.

Assets held by an institution primarily for program-related purposes rather than exclusively for investment are not subject to UPMIFA. For example, a university may purchase land adjacent to its campus for future development. The purchase might not meet prudent investor standards for commercial real estate, but the purchase may be appropriate because the university needs to build a new dormitory. The classroom buildings, administration buildings, and dormitories held by the university all have value as property, but the university does not hold those buildings as financial assets for investment purposes. The Act excludes from the prudent investor norms those assets that a charity uses to conduct its charitable activities, but does not exclude assets that have a tangential tie to the charitable purpose of the institution but are held primarily for investment purposes.

A fund held by an institution is not an institutional fund if any beneficiary of the fund is not an institution. For example, a charitable remainder trust held by a charity as trustee for the benefit of the donor during the donor's lifetime, with the remainder interest held by the charity, is not an institutional fund. However, this subsection treats as an institution a charitable remainder trust that continues to operate for charitable purposes after the termination of the noncharitable interests. The Act will have only a limited effect on a charitable remainder trust that terminates after the noncharitable interest ends. During the period required to complete the distribution of the trust's property, the prudence norm will apply to the actions of the trustee, but the short timeframe will affect investment decision making.

Subsection (6). Person. The Act uses as the definition of person the definition approved by the National Conference of Commissioners on Uniform State Laws. The definition of institution uses the term person, but to be an institution a person must be organized and operated exclusively for charitable purposes. A person with a commercial purpose cannot be an institution. Thus, although the definition of person includes "business trust" and "any other... commercial entity," the Act does not apply to an entity organized for business purposes and not exclusively for

charitable purposes. Further, the definition of person includes trusts, but only trusts managed by charities can be institutional funds. UPMIFA does not apply to trusts managed by corporate trustees or by individual trustees.

If a governing instrument provides that a fund will revert to the donor if, and only if, the institution ceases to exist or the purposes of the fund fail, then the fund will be considered an institutional fund until such contingency occurs.

Subsection (7). Program-Related Asset. Although UPMIFA does not apply to program-related assets, if program-related assets serve, in part, as investments for an institution, then the institution should identify categories for reporting those investments and should establish investment criteria for the investments that are reasonably related to achieving the institution's charitable purposes. For example, a program providing below-market loans to inner-city businesses may be "primarily to accomplish a charitable purpose of the institution" but also can be considered, in part, an investment. The institution should create reasonable credit standards and other guidelines for the program to increase the likelihood that the loans will be repaid.

Subsection (8). Record. This definition was added to clarify that the definition of instrument includes electronic records as defined in Section 2(8) of the Uniform Electronic Transactions Act (1999).

STATUTORY NOTES

Prior Laws. — Former § 33-5002 was repealed. See Prior Laws, § 33-5001.

33-5003. Standard of conduct in managing and investing institutional fund. — (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two (2) or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

- (i) General economic conditions;
- (ii) The possible effect of inflation or deflation;
- (iii) The expected tax consequences, if any, of investment decisions or strategies;
- (iv) The role that each investment or course of action plays within the overall investment portfolio of the fund;
- (v) The expected total return from income and the appreciation of investments;
- (vi) Other resources of the institution;
- (vii) The needs of the institution and the fund to make distributions and to preserve capital; and
- (viii) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution or necessary to meet other circumstances of the institution and the requirements of this chapter.

(f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds. [I.C., § 33-5003, as added by 2007, ch. 173, § 2, p. 512.]

OFFICIAL COMMENT

Purpose and Scope of Revisions. This section adopts the prudence standard for investment decision making. The section directs directors or others responsible for managing and investing the funds of an institution to act as a prudent investor would, using a portfolio approach in making investments

and considering the risk and return objectives of the fund. The section lists the factors that commonly bear on decisions in fiduciary investing and incorporates the duty to diversify investments absent a conclusion that special circumstances make a decision not to diversify reasonable. Thus, the section follows

modern portfolio theory for investment decision making. Section 3 [this section] applies to all funds held by an institution, regardless of whether the institution obtained the funds by gift or otherwise and regardless of whether the funds are restricted.

The Drafting Committee discussed extensively the standard that should govern nonprofit managers. UMIFA states the standard as "ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision." Since the decision in *Stern v. Lucy Webb Hayes National Training School for Deaconesses*, 381 F. Supp. 1003 (1974), the trend has been to hold directors of nonprofit corporations to a standard nominally similar to the corporate standard but with the recognition that the facts and circumstances considered include the fact that the entity is a charity and not a business corporation.

The language of the prudence standard adopted in UPMIFA is derived from the RMNCA and from the prudent investor rule of UPIA. The standard is consistent with the business judgment standard under corporate law, as applied to charitable institutions. That is, a manager operating a charitable organization under the business judgment rule would look to the same factors as those identified by the prudent investor rule. The standard for prudent investment set forth in Section 3 [this section] first states the duty of care as articulated in the RMNCA, but provides more specific guidance for those managing and investing institutional funds by incorporating language from UPIA. The criteria derived from UPIA are consistent with good practice under current law applicable to nonprofit corporations.

Trust law norms already inform managers of nonprofit corporations. The Preamble to UPIA explains: "Although the Uniform Prudent Investor Act by its terms applies to trusts and not to charitable corporations, the standards of the Act can be expected to inform the investment responsibilities of directors and officers of charitable corporations." See also, Restatement (Third) of Trusts: Prudent Investor Rule § 379, Comment b, at 190 (1992) (stating that "absent a contrary statute or other provision, the prudent investor rule applies to investment of funds held for charitable corporations."). Trust precedents have routinely been found to be helpful but not binding authority in corporate cases.

The Drafting Committee decided that by adopting language from both the RMNCA and UPIA, UPMIFA could clarify that common standards of prudent investing apply to all charitable institutions. Although the principal trust authorities, UPIA § (2)(a), Restatement (Third) of Trusts § 337, UTC § 804, and Restatement (Second) of Trusts § 174 (pru-

dent administration) use the phrase "care, skill and caution," the Drafting Committee decided to use the more familiar corporate formulation as found in RMNCA. The standard also appears in Sections 3, 4 and 5 of UPMIFA. The Drafting Committee does not intend any substantive change to the UPIA standard and believes that "reasonable care, skill, and caution" are implicit in the term "care" as used in the RMNCA. The Drafting Committee included the detailed provisions from UPIA, because the Committee believed that the greater precision of the prudence norms of the Restatement and UPIA, as compared with UMIFA, could helpfully inform managers of charitable institutions. For an explanation of the Prudent Investor Act, see John H. Langbein, *The Uniform Prudent Investor Act and the Future of Trust Investing*, 81 Iowa L. Rev. 641 (1996), and for a discussion of the effect UPIA has had on investment decision making, see Max M. Schanzenbach & Robert H. Sitkoff, *Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?*, 50 J. L. & Econ. (forthcoming 2007).

Section 3 [this section] has incorporated the provisions of UPIA with only a few exceptions. UPIA applies to private trusts and is entirely default law. The settlor of a private trust has complete control over virtually all trust provisions. See UTC § 105. Because UPMIFA applies to charitable organizations, UPMIFA makes the duty of care, the duty to minimize costs, and the duty to investigate mandatory. The duty of loyalty is mandatory under applicable organization law, corporate or trust. Other than these duties, the provisions of Section 3 [this section] are default rules. A gift instrument or the governing instruments of an institution can modify these duties, but the charitable purpose doctrine limits the extent to which an institution or a donor can restrict these duties. In addition, subsection (a) [(1)] of Section 3 [this section] reminds the decision maker that the intent of a donor expressed in a gift instrument will control decision making. Further, the decision maker must consider the charitable purposes of the institution and the purposes of the institutional fund for which decisions are being made. These factors are specific to charitable organizations; UPIA § 2(a) states the duty to consider similar factors in the private trust context.

UPMIFA does not include the duty of impartiality, stated in UPIA § 6, because nonprofit corporations do not confront the multiple beneficiaries problem to which the duty is addressed. Under UPIA, a trustee must treat the current beneficiaries and the remainder beneficiaries with due regard to their respective interests, subject to alternative direction from the trust document. A nonprofit corpora-

tion typically creates one charity. The institution may serve multiple beneficiaries, but those beneficiaries do not have enforceable rights in the institution in the same way that beneficiaries of a private trust do. Of course, if a charitable trust is created to benefit more than one charity, rather than being created to carry out a charitable purpose, then UPIA will apply the duty of impartiality to that trust.

In other respects, the Drafting Committee made changes to language from UPIA only where necessary to adapt the language for charitable institutions. No material differences are intended. Subsection (e)(1)(D) [(5)(a)(iv)] of Section 3 of UPMIFA does not include a clause that appears at the end of UPIA § 2(c)(4) ("which may include financial assets, interest in closely held enterprises, tangible and intangible personal property, and real property."). The Drafting Committee deemed this clause unnecessary for charitable institutions. The language of subsection (e)(1)(G) [(5)(a)(vii)] reflects a modification of the language of UPIA § (2)(c)(7). Other minor modifications to the UPIA provisions make the language more appropriate for charitable institutions.

The duties imposed by this section apply to those who govern an institution, including directors and trustees, and to those to whom the directors or managers delegate responsibility for investment and management of institutional funds. The standard applies to officers and employees of an institution and to agents who invest and manage institutional funds. Volunteers who work with an institution will be subject to the duties imposed here, but state and federal statutes may provide reduced liability for persons who act without compensation. UPMIFA does not affect the application of those shield statutes.

Subsection (a) [(1)]. Donor Intent and Charitable Purposes. Subsection (a) [(1)] states the overarching duty to comply with donor intent as expressed in the terms of the gift instrument. The emphasis in the Act on giving effect to donor intent does not mean that the donor can or should control the management of the institution. The other fundamental duty is the duty to consider the charitable purposes of the institution and of the institutional fund in making management and investment decisions. UPIA § 2(a) states a similar duty to consider the purposes of a trust in investing and managing assets of a trust.

Subsection (b) [(2)]. Duty of Loyalty. Subsection (b) [(2)] reminds those managing and investing institutional funds that the duty of loyalty will apply to their actions, but Section 3 [this section] does not state the loyalty standard that applies. The Drafting Committee was concerned, at least nominally,

that different standards of loyalty may apply to directors of nonprofit corporations and to trustees of charitable trusts. The RMNCA provides that under the duty of loyalty a director of a nonprofit corporation should act "in a manner the director reasonably believes to be in the best interests of the corporation." RMNCA § 8.30. The trust law articulation of the loyalty standard uses "sole interests" rather than "best interests." As the Restatement of Trusts explains, "[t]he trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary." Restatement (Second) of Trusts § 170 (1). Although the standards for loyalty, like the standard of care, are merging, see Evelyn Brody, *Charitable Governance: What's Trust Law Got to do With It?* Chi.-Kent L. Rev. (2005); John H. Langbein, *Questioning the Trust Law Duty of Loyalty: Sole Interest or Best Interest*, 114 Yale L.J. 929 (2005), the Drafting Committee concluded that formulating a duty of loyalty provision for UPMIFA was unnecessary. Thus the duty of loyalty under nonprofit corporation law will apply to charities organized as nonprofit corporations, and the duty of loyalty under trust law will apply to charitable trusts.

Subsection (b) [(2)]. Duty of Care. Subsection (b) [(2)] also applies the duty of care to performance of investment duties. The language derives from § 8.30 of the RMNCA. This subsection states the duty to act in good faith, "with the care an ordinarily prudent person in a like position would exercise under similar circumstances." Although the language in the RMNCA and in UPMIFA is similar to that of § 8.30 of the Model Business Corporation Act (3d ed. 2002), the standard as applied to persons making decisions for charities is informed by the fact that the institution is a charity and not a business corporation. Thus, in UPMIFA the references to "like position" and "similar circumstances" mean that the charitable nature of the institution affects the decision making of a prudent person acting under the standard set forth in subsection (b) [(2)]. The duty of care involves considering the factors set forth in subsection (e)(1) [(5)(a)].

Subsection (c)(1) [(3)(a)]. Duty to Minimize Costs. Subsection (c)(1) [(3)(a)] tracks the language of UPIA § 7 and requires an institution to minimize costs. An institution may prudently incur costs by hiring an investment advisor, but the costs incurred should be appropriate under the circumstances. See UPIA § 7 cmt; Restatement (Third) of Trusts: Prudent Investor Rule § 227, cmt. M, at 58 (1992); Restatement (Second) of Trusts § 188 (1959). The duty is consistent with the duty to act prudently under § 8.30 of the RMNCA.

Subsection (c)(2) [(3)(b)]. Duty to Investigate. This subsection incorporates the

traditional fiduciary duty to investigate, using language from UPIA § 2(d). The subsection requires persons who make investment and management decisions to investigate the accuracy of the information used in making decisions.

Subsection (d) [(4)]. Pooling Funds. An institution holding more than one institutional fund may find that pooling its funds for investment and management purposes will be economically beneficial. The Act permits pooling for these purposes. The prohibition against commingling no longer prevents pooling funds for investment and management purposes. *See* UPIA § 3, cmt. (duty to diversify aided by pooling); UPIA § 7, cmt. (pooling to minimize costs); Restatement (Third) of Trusts: Duty to Segregate and Identify Trust Property § 84 (T.D. No. 4 2005). Funds will be considered individually for other purposes of the Act, including for the spending rule for endowment funds of Section 4 and the modification rules of Section 6.

Subsection (e)(1) [(5)(a)]. Prudent Decision Making. Subsection (e)(1) [(5)(a)] takes much of its language from UPIA § 2(c). In making decisions about whether to acquire or retain an asset, the institution should consider the institution's mission, its current programs, and the desire to cultivate additional donations from a donor, in addition to factors related more directly to the asset's potential as an investment.

Subsection (e)(1)(C) [(5)(a)(iii)] reflects the fact that some organizations will invest in taxable investments that may generate unrelated business taxable income for income tax purposes.

Assets held primarily for program-related purposes are not subject to UPMIFA. The management of those assets will continue to be governed by other laws applicable to the institution. Other assets may not be held primarily for program-related purposes but may have both investment purposes and program-related purposes. Subsections (a) and (e)(1)(H) [(1) and (5)(a)(viii)] indicate that a prudent decision maker can take into consideration the relationship between an investment and the purposes of the institution and of the institutional fund in making an investment that may have a program-related purpose but not be primarily program-related. The degree to which an institution uses an asset to accomplish a charitable purpose will affect the weight given that factor in a decision to acquire or retain the asset.

Subsection (e)(2) [(5)(b)]. Portfolio Approach. This subsection reflects the use of portfolio theory in modern investment practice. The language comes from UPIA § 2(b), which follows the articulation of the prudent investor standard in Restatement (Third) of

Trusts: Prudent Investor Rule § 227(a) (1992).

Subsection (e)(3) [(5)(c)]. Broad Investment Authority. Consistent with the portfolio theory of investment, this subsection permits a broad range of investments. The language derives from UPIA § 2(e).

Section 4 of UMIFA indicated that an institution could invest "without restriction to investments a fiduciary may make." The committee removed this language from subsection (e)(3) [(5)(c)] as unnecessary, because states no longer have legal lists restricting fiduciary investing to the specific types of investments identified in statutory lists.

Subsection (e)(3) [(5)(c)] also provides that other law may limit the authority under this subsection. In addition, all of subsection (e) [(5)] is subject to contrary provisions in a gift instrument, and a gift instrument may restrict the ability to invest in particular assets. For example, the gift instrument for a particular institutional fund might preclude the institution from investing the assets of the fund in companies that produce tobacco products.

In her book, *Governing Nonprofit Organizations: Federal and State Law and Regulation 434* (Harv. Univ. Press 2004), Marion R. Fremont-Smith reports that some large charities pledge their endowment funds as security for loans. Subsection (e)(3) [(5)(c)] permits this sort of debt financing, subject to the guidelines of subsection (e)(1) [(5)(a)].

Subsection (e)(4) [(5)(d)]. Duty to Diversify. This subsection assumes that prudence requires diversification but permits an institution to determine that nondiversification is appropriate under exceptional circumstances. A decision not to diversify must be based on the needs of the charity and not solely for the benefit of a donor. A decision to retain property in the hope of obtaining additional contributions from the same donor may be considered made for the benefit of the charity, but the appropriateness of that decision will depend on the circumstances. This subsection derives its language from UPIA § 3. *See* UPIA § 3 cmt. (discussing the rationale for diversification); Restatement (Third) of Trusts: Prudent Investor Rule § 227 (1992).

Subsection (e)(5) [(5)(e)]. Disposing of Unsuitable Assets. This subsection imposes a duty on an institution to review the suitability of retaining property contributed to the institution within a reasonable period of time after the institution receives the property. Subsection (e)(5) [(5)(e)] requires the institution to make a decision but does not require a particular outcome. The institution may consider a variety of factors in making its decision, and a decision to retain the property

either for a period of time or indefinitely may be a prudent decision.

Section 4(2) of UMIFA specifically authorized an institution to retain property contributed by a donor. The comment explained that an institution might retain property in the hope of obtaining additional contributions from the donor. Under UPMIFA the potential for developing additional contributions by retaining property contributed to the institution would be among the "other circumstances" that the institution might consider in deciding whether to retain or dispose of the property. The institution must weigh the potential for obtaining additional contributions with all other factors that affect the suitability of retaining the property in the investment portfolio.

The language of subsection (e)(5) [(5)(e)] comes from UPIA § 4, which restates Restatement (Third) of Trusts: Prudent Investor Rule § 229 (1992), which adopted language from Restatement (Second) of Trusts § 231 (1959). See UPIA § 4 cmt.

Subsection (e)(6) [(5)(f)]. Special Skills or Expertise. Subsection (e)(6) [(5)(f)] states the rule provided in UPIA § 2(f) requiring a trustee to use the trustee's own skills and expertise in carrying out the trustee's fiduciary duties. The comment to RMNCA § 8.30 describes the existence of a similar rule under the law of nonprofit corporations. Section 8.30(a)(2) provides that in discharging duties a director must act "with the care an ordinarily prudent person in a like position would exercise under similar circumstances. . . ." The comment explains that "[t]he concept of 'under similar circumstances' relates not only to the

circumstances of the corporation but to the special background, qualifications, and management experience of the individual director and the role the director plays in the corporation." After describing directors chosen for their ability to raise money, the comment notes that "[n]o special skill or expertise should be expected from such directors unless their background or knowledge evidences some special ability."

The intent of subsection (e)(6) [(5)(f)] is that a person managing or investing institutional funds must use the person's own judgment and experience, including any particular skills or expertise, in carrying out the management or investment duties. For example, if a charity names a person as a director in part because the person is a lawyer, the lawyer's background may allow the lawyer to recognize legal issues in connection with funds held by the charity. The lawyer should identify the issues for the board, but the lawyer is not expected to provide legal advice. A lawyer is not expected to be able to recognize every legal issue, particularly issues outside the lawyer's area of expertise, simply because the board member is lawyer. See ALI Principles of the Law of Nonprofit Organizations, Preliminary Draft No. 3 (May 12, 2005) § 315 (Duty of Care), cmt. c.

UMIFA contained two provisions that authorized investments in pooled or common investment funds. UMIFA §§ 4(3), 4(4). The Drafting Committee concluded that Section 3(e)(3) [(5)(c)] of UPMIFA authorizes these investments. The decision not to include the two provisions in UPMIFA implies no disapproval of such investments.

STATUTORY NOTES

Prior Laws. — Former § 33-5003 was repealed. See Prior Laws, § 33-5001.

33-5004. Appropriation for expenditure or accumulation of endowment fund — Rules of construction. — (1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (a) The duration and preservation of the endowment fund;
- (b) The purposes of the institution and the endowment fund;

- (c) General economic conditions;
- (d) The possible effect of inflation or deflation;
- (e) The expected total return from income and the appreciation of investments;
- (f) Other resources of the institution; and
- (g) The investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends" or "rents, issues or profits," or "to preserve the principal intact," or words of similar import:

- (a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section. [I.C., § 33-5004, as added by 2007, ch. 173, § 2, p. 512.]

OFFICIAL COMMENT

Purpose and Scope of Revisions. This section revises the provision in UMIFA that permitted the expenditure of appreciation of an endowment fund to the extent the fund had appreciated in value above the fund's historic dollar value. UMIFA defined historic dollar value to mean all contributions to the fund, valued at the time of contribution. Instead of using historic dollar value as a limitation, UPMIFA applies a more carefully articulated prudence standard to the process of making decisions about expenditures from an endowment fund. The expenditure rule of Section 4 [this section] applies only to the extent that a donor and an institution have not reached some other agreement about spending from an endowment. If a gift instrument sets forth specific requirements for spending, then the charity must comply with those requirements. However, if the gift instrument uses more general language, for example directing the charity to "hold the fund as an endowment" or "retain principal and spend income," then Section 4 [this section] provides a rule of construction to guide the charity.

Prior to the promulgation of UMIFA, "income" for trust accounting purposes meant interest and dividends but not capital gains, whether or not realized. Many institutions assumed that trust accounting principles applied to charities organized as nonprofit corporations, and the rules limited the institutions' ability to invest their endowment funds effectively. UMIFA addressed this problem by

construing "income" in gift instruments to include a prudent amount of capital gains, both realized and unrealized. Under UMIFA an institution could spend appreciation in addition to spending income determined under trust accounting rules. This rule of construction likely carried out the intent of the donor better than a rule limiting spending to trust accounting income, while permitting the charity to invest in a manner that could generate better returns for the fund.

UPMIFA also applies a rule of construction to terms like "income" or "endowment." The assumption in the Act is that a donor who uses one of these terms intends to create a fund that will generate sufficient gains to be able to make ongoing distributions from the fund while at the same time preserving the purchasing power of the fund. Because historic dollar value under UMIFA was a number fixed in time, the use of that approach may not have adequately captured the intent of a donor who wanted the endowment fund to continue to maintain its value in current dollars. UPMIFA takes a different approach, directing the institution to determine spending based on the total assets of the endowment fund rather than determining spending by adding a prudent amount of appreciation to trust accounting income.

UPMIFA requires the persons making spending decisions for an endowment fund to focus on the purposes of the endowment fund as opposed to the purposes of the institution more generally, as was the case under

UMIFA. When the institution considers the purposes and duration of the fund, the institution will give priority to the donor's general intent that the fund be maintained permanently. Although the Act does not require that a specific amount be set aside as "principal," the Act assumes that the charity will act to preserve "principal" (i.e., to maintain the purchasing power of the amounts contributed to the fund) while spending "income" (i.e. making a distribution each year that represents a reasonable spending rate, given investment performance and general economic conditions). Thus, an institution should monitor principal in an accounting sense, identifying the original value of the fund (the historic dollar value) and the increases in value necessary to maintain the purchasing power of the fund.

Subsection (a) [(1)]. Expenditure of Endowment Funds. Subsection (a) [(1)] uses the RMNCA articulation of the standard of care for decision making under Section 4 [this section]. The change in language does not reflect a substantive change. The comment to Section 3 [§ 33-5003] more fully describes that standard of care.

Section 4 [this section] permits expenditures from an endowment fund to the extent the institution determines that the expenditures are prudent after considering the factors listed in subsection (a). These factors emphasize the importance of the intent of the donor, as expressed in a gift instrument. Section 4 [this section] looks to written documents as evidence of donor's intent and does not require an institution to rely on oral expressions of intent. By requiring written evidence of intent, the Act protects reliance by the donor and the institution on the written terms of a donative agreement. Informal conversations may be misremembered and may be subject to multiple interpretations. Of course, oral expressions of intent may guide an institution in further carrying out a donor's wishes and in understanding a donor's intent.

The factors in subsection (a) [(1)] require attention to the purposes of the institution and the endowment fund, economic conditions, and present and reasonably anticipated resources of the institution. As under UMIFA, determinations under Section 4 [this section] do not depend on the characterization of assets as income or principal and are not limited to the amount of income and unrealized appreciation. The authority in Section 4 [this section] is permissive, however, and an institution organized as a trust may continue to make spending decisions under trust accounting principles so long as doing so is prudent.

Institutions have operated effectively under UMIFA and have operated more conservatively than the historic dollar value rule

would have permitted. Institutions have little incentive to maximize allowable spending. Good practice has been to provide for modest expenditures while maintaining the purchasing power of a fund. Institutions have followed this practice even though UMIFA (1) does not require an institution to maintain a fund's purchasing power and (2) does allow an institution to spend any amounts in a fund above historic dollar value, subject to the prudence standard. The Drafting Committee concluded that eliminating historic dollar value and providing institutions with more discretion would not lead to depletion of endowment funds. Instead, UPMIFA should encourage institutions to establish a spending policy that will be responsive to short-term fluctuations in the value of the fund. Section 4 [this section] allows an institution to maintain appropriate levels of expenditures in times of economic downturn or economic strength. In some years, accumulation rather than spending will be prudent, and in other years an institution may appropriately make expenditures even if a fund has not generated investment return that year.

Several levels of safeguard exist to prevent an institution from depleting an endowment fund or diverting assets from the purposes for which the fund was created. In comparison with UMIFA, UPMIFA provides greater direction to the institution with respect to making a prudent determination about spending from an endowment. UMIFA told the decision maker to consider "long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions." UPMIFA clarifies that in making spending decisions the institution should attempt to ensure that the value of the fund endures while still providing that some amounts be spent for the purposes of the endowment fund. In UPMIFA prudent decision making emphasizes the endowment aspect of the fund, rather than the overall purposes or needs of the institution.

In addition to the guidance provided by Section 4 [this section], other safeguards exist. Donors can restrict gifts and can provide specific instructions to donee institutions regarding appropriate uses for assets contributed. Within institutions, fiduciary duties govern the persons making decisions on expenditures. Those persons must operate both with the best interests of the institution in mind and in keeping with the intent of donors. If an institution diverts an institutional fund from the charitable purposes of the institution, the state attorney general can enforce the charitable interests of the public. By relying on these safeguards while providing

institutions with adequate discretion to make appropriate expenditures, the Act creates a standard that takes into consideration the diversity of the charitable sector. The committee expects that accumulated experience with such spending formulas will continue to inform institutional practice under the Act.

Distinguishing Legal and Accounting Standards. Deleting historic dollar value does not transform any portion of an endowment fund into unrestricted assets from a legal standpoint. An endowment fund is restricted because of the donor's intent that the fund be restricted by the prudent spending rule, that the fund not be spent in the current year, and that the fund continue to maintain its value for a long time. Regardless of the treatment of endowment fund from an accounting standpoint, legally an endowment fund should not be considered unrestricted. Subsection (a) states that endowment funds will be legally restricted until the institution appropriates funds for expenditure. The UMIFA statutes in Utah and Maine contain similar language. 13 Me. Rev. Stat. Ann. tit. 13 § 4106 (West 2005); Utah Code Ann. 1953 § 13-29-3 (2005). *See, also*, advisory published by Mass. Attorney General, "The Attorney General's Position on FASB Statement of Financial Accounting Standards No. 117, ¶ 22 and Related G.L.C. 180A Issues" (January 2004) <http://www.ago.state.ma.us/filelibrary/fasb.pdf> (last visited May 22, 2006) (concerning the treatment of endowments as legally restricted assets).

The term "endowment fund" includes funds that may last in perpetuity but also funds that are created to last for a fixed term of years or until the institution achieves a specified objective. Section 4 [this section] requires the institution to consider the intended duration of the fund in making determinations about spending. For example, if a donor directs that a fund be spent over 20 years, Section 4 [this section] will guide the institution in making distribution decisions. The institution would amortize the fund over 20 years rather than try to maintain the fund in perpetuity. For an endowment fund of limited duration, spending at a rate higher than rates typically used for endowment spending will be both necessary and prudent.

Subsection (c) [(3)]. Rule of Construction. Donor's intent must be respected in the process of making decisions to expend endowment funds. Section 4 [this section] does not allow an institution to convert an endowment fund into a non-endowment fund nor does the section allow the institution to ignore a donor's intent that a fund be maintained as an endowment. Rather, subsection (c) [(3)] provides rules of construction to assist institutions in interpreting donor's intent. Subsection (c) [(3)] assumes that if a donor wants an

institution to spend "only the income" from a fund, the donor intends that the fund both support current expenditures and be preserved permanently. The donor is unlikely to be concerned about designation of particular returns as "income" or "principal" under accounting principles. Rather the donor is more likely to assume that the institution will use modern total-return investing techniques to generate enough funds to distribute while maintaining the long-term viability of the fund. Subsection (c) [(3)] is an intent effectuating provision that provides default rules to construe donor's intent.

As subsection (b) [(2)] explains, a donor who wants to specify particular spending guidelines can do so. For example, a donor might require that a charity spend between three and five percent of an endowed gift each year, regardless of investment performance or other factors. Because the charity agrees to the restriction in accepting the gift, the restriction will govern spending decisions by the charity. Another donor might want to limit expenditures to trust accounting income and not want the institution to be able to expend appreciation. An instruction to "pay only the income" will not be specific enough, but an instruction to "pay only interest and dividend income earned by the fund and not to make other distributions of the kind authorized by Section 4 of UPMIFA" should be sufficient. If a donor indicates that the rules on investing or expenditures under Section 4 [this section] do not apply to a particular fund, then as a practical matter the institution will probably invest the fund separately. Thus, a decision by a donor to require fund specific expenditure rules will likely also have consequences in the way the institution invests the fund.

Retroactive Application of the Rule of Construction. A constructional rule resolves an ambiguity, in this case, because donors use words like endowment or income without specific directions regarding the intended meaning. Changing a statutory constructional rule does not change the underlying intent, and instead changes the way an ambiguity is resolved, in an attempt to increase the likelihood of giving effect to the intent of most donors.

If a donor has stated in a gift instrument specific directions as to spending, then the institution must respect those wishes, but many donors do not give precise instructions about how to spend endowment funds. In Section 4 [this section] UPMIFA provides guidance for giving effect to a donor's intent when the donor has not been specific. Like Section 3 of UMIFA, Section 4 [this section] of UPMIFA is a rule of construction, so it does not violate either donor intent or the Constitution.

The issue of whether to apply a rule of

construction retroactively was considered in connection with UMIFA. When the New Hampshire legislature considered UMIFA, the Senate asked the New Hampshire Supreme Court for an opinion regarding whether UMIFA, if adopted, would violate a provision of the state constitution prohibiting retrospective laws, and also whether the statute would encroach on the functions of the judicial branch. The opinion answered no to both questions. Opinion of the Justices, Request of the Senate No. 6667, 113 N.H. 287, 306 A.2d 55 (1973).

More recently the Colorado Supreme Court considered the retroactive application of another constructional statute, one that deems the designation of a spouse as the beneficiary of a life insurance policy to be revoked in a case in which the marriage was dissolved after the naming of the spouse as beneficiary. In *re Estate of DeWitt*, 54 P. 3d 849 (Colo. 2002). In holding that retroactive application of the statute did not violate the Contracts Clause, the court cited approvingly from a statement prepared by the Joint Editorial Board for Uniform Trusts and Estates Acts (JEB). JEB Statement Regarding the Constitutionality of Changes in Default Rules as Applied to PreExisting Documents, 17 Am. Coll. Tr. & Est. Couns. Notes 184 app. II (1991).

The JEB Statement explains that the purpose of the anti-retroactivity norm is to protect a transferor who relies on existing rules of law. By definition, however, rules of construction apply only in situations in which a transferor did not spell out his or her intent and hence did not rely on the then-current rule of construction. *See also In re Gardner's Trust*, 266 Minn. 127, 132, 123 N.W. 2d 69, 73 (1963) ("[I]t is doubtful whether the testatrix had any clear intention in mind at the time the will was executed. It is equally plausible that if she had thought about it at all she would have desired to have the dividends go where the law required them to go at the time they were received by the trustee.") (Uniform Principal and Income Act).

Non-retroactivity would produce serious practical problems: If the Act were not retroactive, a charity would need to keep two sets of books for each endowment fund created before the enactment of UPMIFA, if new funds were added after the enactment. The burden that such a rule would impose is out of proportion to the benefit sought.

[NOTE: Idaho did not adopt subsection (d) of section (4) of the uniform prudent management of institutional funds act.]

Subsection (d). Rebuttable Presumption of Imprudence. The Drafting Committee debated at length whether to include a presumption of imprudence for spending

above a fixed percentage of the value of the fund. The Drafting Committee decided to include a presumption in the Act in brackets, as an option for states to consider, and to include in these Comments a discussion of the advantages and disadvantages of including a presumption in the Act.

Some who commented on the Act viewed the presumption as linked to the retroactive application of the rule of construction of subsection (c) [(3)]. A donor who contributed to an endowment fund under UMIFA may have assumed that the historic dollar value of the gift would be subject to a no-spending rule under the statute. Because UPMIFA removes the concept of historic dollar value, the bracketed presumption of imprudence would assure the donor that spending from an endowment fund will be so limited.

Those in favor of the presumption of imprudence argued that the presumption would curb the temptation that a charity might have to spend endowment assets too rapidly. Although the presumption would be rebuttable, and spending above the identified percentage might, in some years and for some charities, be prudent, institutions would likely be reluctant to authorize spending above seven percent. In addition, the presumption would give the attorney general a benchmark of sorts.

A variety of considerations cut against including a presumption of imprudence in the statute. A fixed percentage in the statute might be perceived as a safe harbor that could lead institutions to spend more than is prudent. Although the provision should not be read to imply that spending below seven percent will be considered prudent, some charities might interpret the statute in that way. Decision makers might be pressured to spend up to the percentage, and in doing so spend more than is prudent, without adequate review of the prudence factors as required under the Act.

Perhaps the biggest problem with including a presumption in the statute is the difficulty of picking a number that will be appropriate in view of the range of institutions and charitable purposes and the fact that economic conditions will change over time. Under recent economic conditions, a spending rate of seven percent is too high for most funds, but in a period of high inflation, seven percent might be too low. In making a prudent decision regarding how much to spend from an endowment fund, each institution must consider a variety of factors, including the particular purposes of the fund, the wishes of the donors, changing economic factors, and whether the fund will receive future donations.

Whether or not a statute includes the presumption, institutions must remember that prudence controls decision making. Each in-

stitution must make decisions on expenditures based on the circumstances of the particular charity.

Application of Presumption. For a state wishing to adopt a presumption of imprudence, subsection (d) provides language. Under subsection (d), a rebuttable presumption of imprudence will arise if expenditures in one year exceed seven percent of the assets of an endowment fund. The subsection applies a rolling average of three or more years in determining the value of the fund for purposes of calculating the seven-percent amount. An institution can rebut the presumption of imprudence if circumstances in a particular year make expenditures above that amount prudent. The concept and the language for the presumption of imprudence comes from Mass. Gen. L. ch. 180A, § 2 (2004). Massachusetts enacted this rule in 1975 as part of its UMIFA statute. New Mexico adopted the same presumption in 1978. N.M.S.A. § 46-9-2C (2004). New Hampshire has a similar provision. N.H. Rev. Stat. § 292-B:6.

The period that a charity uses to calculate the presumption (three or more years) and the frequency of valuation (at least quarterly) will be binding in any determination of whether the presumption applies. For example, if a charity values an endowment fund on a quarterly basis and averages the quarterly values over three years to determine the fair market value of the fund for purposes calculating seven percent of the fund, the charity's choices of three years as a smoothing period and quarterly as a valuation period cannot be challenged. If the charity makes an appropriation that is less than seven percent of this value, then the presumption of imprudence does not arise even if the appropriation would exceed seven percent of the value of the fund calculated based on monthly valuations averaged over five years.

If sufficient evidence establishes, by the preponderance of the evidence, the facts necessary to raise the presumption of imprudence, then the institution will have to carry the burden of production of (i.e., the burden of going forward with) other evidence that would tend to demonstrate that its decision was prudent. The existence of the presumption does not shift the burden of persuasion to the charity.

Expenditures from an endowment fund may include distributions for charitable purposes and amounts used for the management and administration of the fund, including annual charges for fundraising. The value of a fund, as calculated for purposes of determining the seven percent amount, will reflect increases due to contributions and investment gains and decreases due to distributions and investment losses. The seven percent

figure includes charges for fundraising and administrative expenses other than investment management expenses. All costs or fees associated with an endowment fund are factors that prudent decision makers consider. High costs or fees of investment management could be considered imprudent regardless of whether spending exceeds seven percent of the fund's value.

The presumption of imprudence does not create an automatic safe harbor. Expenditures at six percent might well be imprudently high. See James P. Garland, *The Fecundity of Endowments and Long-Duration Trusts*, *The Journal of Portfolio Management* (2005). Evidence reviewed by the Drafting Committee suggests that at present few funds can sustain spending at a rate above five percent. See Roger G. Ibbotson & Rex A. Sinquefeld, *Stocks, Bonds, Bills, and Inflation: Historical Returns (1926-1987)* (Research Foundation of the Institute of Chartered Financial Analysts, 1989). Indeed, under current conditions five percent can be too high. See Joel C. Dobris, *Why Five? The Strange, Magnetic, and Mesmerizing Affect of the Five Percent Unitrust and Spending Rate on Settlers, Their Advisers, and Retirees*, 40 *Real Prop. Prob. & Tr. J.* 39 (2005). Further, spending at a lower rate, particularly in the early years of an endowment, may result in greater distributions over time. See DeMarche Associates, Inc., *Spending Policies and Investment Planning for Foundations: A Structure for Determining a Foundation's Asset Mix* (Council on Foundations: 3d ed. 1999). A presumption of imprudence can serve as a reminder that spending at too high a rate will jeopardize the long-term nature of an endowment fund. If an endowment fund is intended to continue permanently, the institution should take special care to limit annual spending to a level that protects the purchasing power of the fund.

Subsection (d) provides that the terms of the gift instrument can provide additional spending authority. For example, if a gift instrument directs that an institution expend a fund over a ten-year period, exhausting the fund after ten years, spending at a rate higher than seven percent will be necessary.

Subsection (d) does not require an institution to spend a minimum amount each year. The prudence standard and the needs of the institution will supply sufficient guidance regarding whether to accumulate rather than to spend in a particular year.

Spending above seven percent in any one year will not necessarily be imprudent. For some endowment funds fluctuating spending rates may be appropriate. Although the Act does not apply the percentage for the presumption on a rolling basis (e.g., 21 percent over three years), some endowment funds

may prudently spend little or nothing in some years and more than seven percent in other years. For example, a charity planning a construction project might decide to spend nothing from an endowment for three years and then in the fourth year might spend 20 percent of the value of the fund for construction costs. The decision to accumulate in years one through three and then to spend 20 percent in the fourth year might be prudent for the charity, depending on the other factors. The charity should maintain adequate records during the accumulation period and should document the decision-making process in the fourth year to be able to meet the burden of production associated with the presumption. Another charity might prudently spend 20 percent in year one and nothing for the following three years. That charity would also need to document the decision-making process through which the decision to spend occurred and maintain records explaining why the decision was prudent under the circumstances.

A charity might establish a "capital replacement fund" designed to provide funds to the institution for repair or replacement of major items of equipment. Disbursements from such a fund will likely fluctuate, with limited expenditures in some years and big expenditures in others. The fund would not exhibit a uniform spending rate. Indeed, an advantage of a capital replacement fund is the ability to absorb a significant capital expenditure in a single year without a negative impact on the operating budget of the institution. Disbursements might average five percent per year but would vary, with spending in some years more and in some years less. Even if this fund is an endowment fund subject to Section 4 [this section], spending above seven percent in a particular year could well be prudent. Subsection (d) does not preclude spending above seven percent.

A charity creating a capital replacement fund or a building fund might choose to adopt spending rules for the fund that would not be subject to UPMIFA. Specific donor intent can supersede the rules of UPMIFA. If the charity creates a gift instrument that establishes appropriate rules on spending for the fund, and if donors agree to those restrictions, then the UPMIFA rules on spending, including the bracketed presumption, will not apply.

Institutions with Limited Investment and Spending Experience. Several attorneys general and other charity officials raised concerns about whether small institutions would be able to adjust to a spending rule based solely on prudence, without the bright-line guidance of historic dollar value. Some charity regulators who spoke with the Drafting Committee noted that large institutions have sophisticated investment strategies, ac-

cess to good investment advisors, and experience with spending rules that maintain purchasing power for endowment funds. For these institutions, the rules of UPMIFA should work well. For smaller institutions, however, the state regulators thought that additional guidance could be helpful. After discussing strategies to address this concern, the Drafting Committee decided to include in these comments an additional optional provision that a state could choose to include in its UPMIFA statute.

The optional provision focuses on institutions with endowment funds valued, in the aggregate, at less than \$2,000,000. The number is in brackets to indicate that it could be set higher or lower. The number was chosen to address the concern of the state regulators that some small charities might be more likely to spend imprudently than large charities. The Drafting Committee selected \$2,000,000 as the value that might include most unsophisticated institutions but would not be overinclusive.

The optional provision creates a notification requirement for an institution with a small endowment that plans to spend below historic dollar value. If an institution subject to the provision decides to appropriate an amount that would cause the value of its endowment funds to drop below the aggregate historic dollar value for all of its endowment funds, then the institution will have to notify the attorney general before proceeding with the expenditure. The provision does not require that the institution obtain the approval of the attorney general before making the distribution. Rather, the notification requirement gives the attorney general the opportunity to take a closer look at the institution and its spending decision, to educate the institution on prudent decision making for endowment funds, and to intervene if the attorney general determines that the spending would be imprudent for the institution. Although the Drafting Committee thinks that the prudence standard in UPMIFA provides adequate guidance to all institutions within the scope of the Act, if a state chooses to adopt a notification provision for institutions with small endowments, the Drafting Committee recommends the following language:

(—) If an institution has endowment funds with an aggregate value of less than [\$2,000,000], the institution shall notify the [Attorney General] at least [60 days] prior to an appropriation for expenditure of an amount that would cause the value of the institution's endowment funds to fall below the aggregate historic dollar value of the institution's endowment funds, unless the expenditure is permitted or required under law other than this [act] or in the gift instrument. For purposes of this subsec-

tion, "historic dollar value" means the aggregate value in dollars of (i) each endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time the donation is made, and (iii) each accumulation made

pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The institution's determination of historic dollar value made in good faith is conclusive.

STATUTORY NOTES

Prior Laws. — Former § 33-5004 was repealed. See Prior Laws, § 33-5001.

33-5005. Delegation of management and investment functions. —

(1) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this state other than this chapter. [I.C., § 33-5005, as added by 2007, ch. 173, § 2, p. 512.]

OFFICIAL COMMENT

The prudent investor standard in Section 4 [§ 33-5004] presupposes the power to delegate. For some types of investment, prudence requires diversification, and diversification may best be accomplished through the use of pooled investment vehicles that entail delegation. The Drafting Committee decided to put Section 5 [this section] in brackets because many states already provide sufficient authority to delegate authority through other statutes. If such authority exists, then an enacting state should enact UPMIFA without Section 5 [this section]. Enacting delegation

rules that duplicate existing rules could be confusing and might create conflicts. For charitable trusts, UPIA provides the same delegation rules as those in Section 5 [this section]. For nonprofit corporations, nonprofit corporation statutes often provide comparable rules. A state enacting UPMIFA must be certain that its laws authorize delegation, either through other statutes or by enacting Section 5 [this section].

Section 5 [this section] incorporates the delegation rule found in UPIA § 9, updating the delegation rules in UMIFA § 5. Section 5

[this section] permits the decision makers in an institution to delegate management and investment functions to external agents if the decision makers exercise reasonable skill, care, and caution in selecting the agent, defining the scope of the delegation and reviewing the performance of the agent. In some circumstances, the scope of the delegation may include redelegation. For example, an institution may select an investment manager to assist with investment decisions. The delegation may include the authority to redelegate to investment managers with expertise in particular investment areas. All decisions to delegate require the exercise of reasonable care, skill, and caution in selecting, instructing, and monitoring agents. Further, decision makers cannot delegate the authority to make decisions concerning expenditures and can only delegate management and investment functions. Subsection (c) [(3)] protects decision makers who comply with the requirement for proper delegation from liability for actions or decisions of the agents. In making decisions concerning delegation, the institution must be mindful of Section 3(c)(1) [§ 33-5003(3)(a)] of UPMIFA, the provision that directs the institution to incur only reasonable costs in managing and investing an institutional fund.

Section 5 [this section] does not address issues of internal delegation and potential liability for internal delegation, and subsection (c) [(3)] does not affect laws that govern personal liability of directors or trustees for matters outside the scope of Section 5 [this section]. Directors will look to nonprofit cor-

poration laws for these rules, while trustees will look to trust law. *See, e.g.*, RMNCA, § 8.30(b) (permitting directors to rely on information prepared by an officer or employee of the institution if the director reasonably believes the officer or employee to be reliable and competent in the matters presented).

The language of subsection (c) [(3)] is similar to that of UPIA § 9(c) and RMNCA § 8.30(d). The decision not to include the terms “beneficiaries” or “members” in subsection (c) [(3)] does not indicate a decision that this section does not create immunity from claims brought by beneficiaries or members. Instead, a decision maker who complies with Section 5 [this section] will be protected from any liability resulting from actions or decisions made by an external agent.

Subsection (d) [(4)] creates personal jurisdiction over the agent. This subsection is not a choice of law rule.

Subsection (e) [(5)] notes that law other than this Act governs internal delegation. Section 5 of UMIFA included internal delegation as well as external delegation, due to a concern at that time that trust law concepts might govern internal delegation in nonprofit corporations. With the widespread adoption of nonprofit corporation statutes, that concern no longer exists. The decision not to address internal delegation in UPMIFA does not suggest that a governing board of a nonprofit corporation cannot delegate to committees, officers, or employees. Rather, a nonprofit corporation must look to other law, typically a nonprofit corporation statute, for the rules governing internal delegation.

STATUTORY NOTES

Prior Laws. — Former § 33-5005 was repealed. See Prior Laws, § 33-5001.

33-5006. Release or modification of restrictions on management, investment or purpose. — (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor’s probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty (60) days after notification to the attorney general and the donor if available, may release or modify the restriction, in whole or part, if:

(a) The institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars (\$25,000);

(b) More than ten (10) years have elapsed since the fund was established; and

(c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument. [I.C., § 33-5006, as added by 2007, ch. 173, § 2, p. 512.]

OFFICIAL COMMENT

Section 6 [this section] expands the rules on releasing or modifying restrictions that are found in Section 7 of UMIFA. Subsection (a) [(1)] restates the rule from UMIFA allowing the release of a restriction with donor consent. Subsections (b) and (c) [(2) and (3)] make clear that an institution can always ask a court to apply equitable deviation or *cy pres* to modify or release a restriction, under appropriate circumstances. Subsection (d) [(4)], a new provision, permits an institution to apply *cy pres* on its own for small funds that have existed for a substantial period of time, after giving notice to the state attorney general.

Although UMIFA stated that it did not “limit the application of the doctrine of *cy pres*”, UMIFA § 7(d), what that statement meant under the Act was unclear. UMIFA itself appeared to permit only a release of a restriction and not a modification. That all-or-nothing approach did not adequately protect donor intent. *See* *Yale Univ. v. Blumenthal*, 621 A.2d 1304 (Conn. 1993). By expressly including deviation and *cy pres*, UPMIFA requires an institution to seek modifications that are “in accordance with the donor’s probable intention” for deviation and “in a manner consistent with the charitable purposes expressed in the gift instrument” for *cy pres*.

Individual Funds. The rules on modification require that the institution, or a court applying a court-ordered doctrine, review each institutional fund separately. Although an institution may manage institutional

funds collectively, for purposes of this Section each fund must be considered individually.

Subsection (a) [(1)]. Donor Release. Subsection (a) [(1)] permits the release of a restriction if the donor consents. A release with donor consent cannot change the charitable beneficiary of the fund. Although the donor has the power to consent to a release of a restriction, this section does not create a power in the donor that will cause a federal tax problem for the donor. The gift to the institution is a completed gift for tax purposes, the property cannot be diverted from the charitable beneficiary, and the donor cannot redirect the property to another use by the charity. The donor has no retained interest in the fund.

Subsection (b) [(2)]. Equitable Deviation. Subsection (b) [(2)] applies the rule of equitable deviation, adapting the language of UTC § 412 to this section. *See also* Restatement (Third) of Trusts § 66 (2003). Under the deviation doctrine, a court may modify restrictions on the way an institution manages or administers a fund in a manner that furthers the purposes of the fund. Deviation implements the donor’s intent. A donor commonly has a predominating purpose for a gift and, secondarily, an intent that the purpose be carried out in a particular manner. Deviation does not alter the purpose but rather modifies the means in order to carry out the purpose.

Sometimes deviation is needed on account

of circumstances unanticipated when the donor created the restriction. In other situations the restriction may impair the management or investment of the fund. Modification of the restriction may permit the institution to carry out the donor's purposes in a more effective manner. A court applying deviation should attempt to follow the donor's probable intention in deciding how to modify the restriction. Consistent with the doctrine of equitable deviation in trust law, subsection (b) [(2)] does not require an institution to notify donors of the proposed modification. Good practice dictates notifying any donors who are alive and can be located with a reasonable expenditure of time and money. Consistent with the doctrine of deviation under trust law, the institution must notify the attorney general who may choose to participate in the court proceeding. The attorney general protects donor intent as well as the public's interest in charitable assets. Attorney general is in brackets in the Act because in some states another official enforces the law of charities.

Subsection (c) [(3)]. Cy Pres. Subsection (c) [(3)] applies the rule of cy pres from trust law, authorizing the court to modify the purpose of an institutional fund. The term "modify" encompasses the release of a restriction as well as an alteration of a restriction and also permits a court to order that the fund be paid to another institution. A court can apply the doctrine of cy pres only if the restriction in question has become unlawful, impracticable, impossible to achieve, or wasteful. This standard, which comes from UTC § 413, updates the circumstances under which cy pres may be applied by adding "wasteful" to the usual common law articulation of the doctrine. Any change must be made in a manner consistent with the charitable purposes expressed in the gift instrument. *See also* Restatement (Third) of Trusts § 67 (2003). Consistent with the doctrine of cy pres, subsection (c) [(3)] does not require an institution seeking cy pres to notify donors. Good practice will be to notify donors whenever possible. As with deviation, the institution must notify the attorney general who must have the opportunity to be heard in the proceeding.

Subsection (d) [(4)]. Modification of Small, Old Funds. Subsection (d) [(4)] permits an institution to release or modify a restriction according to cy pres principles but without court approval if the amount of the institutional fund involved is small and if the institutional fund has been in existence for more than 20 [(10)] years. The rationale is that under some circumstances a restriction may no longer make sense but the cost of a judicial cy pres proceeding will be too great to warrant a change in the restriction. The Drafting Committee discussed at length the

parameters for allowing an institution to apply cy pres without court supervision. The Committee drafted subsection (d) [(4)] to balance the needs of an institution to serve its charitable purposes efficiently with the policy of enforcing donor intent. The Committee concluded that an institutional fund with a value of \$25,000 or less is sufficiently small that the cost of a judicial proceeding will be out of proportion to its protective purpose. The Committee included a requirement that the institutional fund be in existence at least 20 [(10)] years, as a further safeguard for fidelity to donor intent. The 20-year [10-year] period begins to run from the date of inception of the fund and not from the date of each gift to the fund. The amount and the number of years have been placed in brackets to signal to an enacting jurisdiction that it may wish to designate a higher or lower figure. Because the amount should reflect the cost of a judicial proceeding to obtain a modification, the number may be higher in some states and lower in others.

As under judicial cy pres, an institution acting under subsection (d) [(4)] must change the restriction in a manner that is in keeping with the intent of the donor and the purpose of the fund. For example, if the value of a fund is too small to justify the cost of administration of the fund as a separate fund, the term "wasteful" would allow the institution to combine the fund with another fund with similar purposes. If a fund has been created for nursing scholarships and the institution closes its nursing school, the institution might appropriately decide to use the fund for other scholarships at the institution. In using the authority granted under subsection (d) [(4)], the institution must determine which alternative use for the fund reasonably approximates the original intent of the donor. The institution cannot divert the fund to an entirely different use. For example, the fund for nursing scholarships could not be used to build a football stadium.

An institution seeking to modify a provision under subsection (d) [(4)] must notify the attorney general of the planned modification. The institution must wait 60 days before proceeding; the attorney general may take action if the proposed modification appears inappropriate.

Notice to Donors. The Drafting Committee decided not to require notification of donors under subsections (b), (c), and (d) [(2), (3), and (4)]. The trust law rules of equitable deviation and cy pres do not require donor notification and instead depend on the court and the attorney general to protect donor intent and the public's interest in charitable assets.

With regard to subsection (d) [(4)], the

Drafting Committee concluded that an institution should not be required to give notice to donors. Subsection (d) [(4)] can only be used for an old and small fund. Locating a donor who contributed to the fund more than 20 [(10)] years earlier may be difficult and expensive. If multiple donors each gave a small

amount to create a fund 20 [(10)] years earlier, the task of locating all of those donors would be harder still. The Drafting Committee concluded that an institution's concern for donor relations would serve as a sufficient incentive for notifying donors when donors can be located.

STATUTORY NOTES

Prior Laws. — Former § 33-5006 was repealed. See Prior Laws, § 33-5001.

33-5007. Reviewing compliance. — Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight. [I.C., § 33-5007, as added by 2007, ch. 173, § 2, p. 512.]

STATUTORY NOTES

Prior Laws. — Former § 33-5007 was repealed. See Prior Laws, § 33-5001.

33-5008. Application to existing institutional funds. — This chapter applies to institutional funds existing on or established after July 1, 2007. As applied to institutional funds existing on July 1, 2007, this chapter governs only decisions made or actions taken on or after that date. [I.C., § 33-5008, as added by 2007, ch. 173, § 2, p. 512.]

STATUTORY NOTES

Prior Laws. — Former § 33-5008 was repealed. See Prior Laws, § 33-5001.

33-5009. Relation to electronic signatures in global and national commerce act. — This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. section 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. section 7003(b). [I.C., § 33-5009, as added by 2007, ch. 173, § 2, p. 512.]

33-5010. Uniformity of application and construction. — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [I.C., § 33-5010, as added by 2007, ch. 173, § 2, p. 512.]

CHAPTER 51

POSTSECONDARY ENROLLMENT OPTIONS

SECTION.

- 33-5101. Purpose.
- 33-5102. Definitions.
- 33-5103. Authorization — Notification.
- 33-5104. Counseling.
- 33-5105. Dissemination of information —
Notification of intent to enroll.

SECTION.

- 33-5106. Limit on participation.
- 33-5107. Enrollment priority.
- 33-5108. Courses according to agreements.
- 33-5109. Credits.
- 33-5110. Financial arrangements.

33-5101. Purpose. — The purpose of this chapter is to promote rigorous academic pursuits and to provide a wider variety of options to high school pupils by encouraging and enabling secondary pupils to enroll full-time or part-time in nonsectarian courses or programs in eligible postsecondary institutions as defined in section 33-5102, Idaho Code. [I.C., § 33-5101, as added by 1997, ch. 283, § 1, p. 859.]

33-5102. Definitions. — As used in this chapter:

- (1) “Course” means a course of instruction or a program of instruction.
- (2) “Eligible institution” means an Idaho public postsecondary institution; a private two-year trade and technical school accredited by a reputable accrediting association; or a private, residential, two-year or four-year liberal arts, degree-granting college or university located in Idaho. [I.C., § 33-5102, as added by 1997, ch. 283, § 1, p. 859.]

33-5103. Authorization — Notification. — Notwithstanding any other law, administrative rule or local policy to the contrary, an eleventh or twelfth grade pupil enrolled in a public school, except a foreign exchange pupil enrolled in a district under a cultural exchange program, may apply to an eligible institution to enroll in nonsectarian courses offered by that postsecondary institution. If an institution accepts a secondary pupil for enrollment under the provisions of this chapter, the institution shall send written notice to the pupil and the pupil’s school district within ten (10) days of acceptance. The notice shall indicate the course and hours of enrollment of that pupil. If the pupil enrolls in a course for postsecondary credit, the institution shall notify the pupil about payment in the customary manner used by the institution. [I.C., § 33-5103, as added by 1997, ch. 283, § 1, p. 859.]

33-5104. Counseling. — (1) To the extent possible, the school district shall provide counseling services to pupils and their parents or guardians before the pupil enrolls in courses under the provisions of this chapter to ensure that the pupil and parents or guardian are fully aware of the risks and possible consequences of enrolling in postsecondary courses. The district shall provide information on the program including who may enroll, what institutions and sources are available under this program, the decision-making process for granting academic credits, financial arrangements for tuition, books and materials, eligibility criteria for transportation

aid, available support services, the need to arrange an appropriate schedule, consequences of failing or not completing a course in which the pupil enrolls, the effect of enrolling in this program on the pupil's ability to complete the required high school graduation requirements, and the academic and social responsibilities that must be assumed by the pupil and the parents or guardian. The person providing counseling shall encourage pupils and their parents or guardian to also use available counseling services at the postsecondary institutions prior to the semester of enrollment to ensure that anticipated plans are appropriate and adequate.

(2) Prior to enrolling, the pupil and the pupil's parents or guardian must sign a form that shall be provided by the school district and may be obtained from a postsecondary institution stating that they have received the information specified herein and that they understand the responsibilities that must be assumed in enrolling in this program. The superintendent of public instruction shall, upon request, provide technical assistance to a school district in developing appropriate forms and counseling guidelines. [I.C., § 33-5104, as added by 1997, ch. 283, § 1, p. 859.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

33-5105. Dissemination of information — Notification of intent to enroll. — By March 1 of each year, a school district shall provide general information about the program to all pupils in grades ten (10) and eleven (11). To assist the district in planning, a pupil shall inform the district by March 30 of each year of the pupil's intent to enroll in postsecondary courses during the following school year. A pupil is not bound by notifying or not notifying the district by March 30. [I.C., § 33-5105, as added by 1997, ch. 283, § 1, p. 859.]

33-5106. Limit on participation. — (1) A pupil who first enrolls in grade eleven (11) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of two (2) academic years.

(2) A pupil who first enrolls in grade twelve (12) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of one (1) academic year.

(3) A pupil may also be enrolled in courses for secondary credits approved by the local school district. If a pupil's enrollment pursuant to this chapter decreases the pupil's instructional time in the local school district to less than four (4) hours a day, the pupil shall nevertheless be counted as in local school district instructional time for four (4) hours a day for purposes of chapter 10, title 33, Idaho Code.

(4) A pupil who has completed course requirements for graduation but who has not received a diploma may participate in the program.

(5) A pupil who has graduated from high school cannot participate in the program. [I.C., § 33-5106, as added by 1997, ch. 283, § 1, p. 859; am. 1998, ch. 165, § 1, p. 559.]

33-5107. Enrollment priority. — A postsecondary institution shall give priority to its postsecondary students when enrolling eleventh and twelfth grade pupils in courses for secondary credit. Once a pupil has been enrolled in a postsecondary course under the provisions of this chapter, the pupil shall not be displaced by another student. [I.C., § 33-5107, as added by 1997, ch. 283, § 1, p. 859.]

33-5108. Courses according to agreements. — An eligible pupil may enroll in a nonsectarian course taught by a secondary teacher or a postsecondary faculty member and offered at a secondary school, or another location, according to an agreement between a school board and the governing body of an eligible public postsecondary system or an eligible private postsecondary institution. All provisions of this section shall apply to a pupil, school board, school district and the governing body of a postsecondary institution, except as otherwise provided. [I.C., § 33-5108, as added by 1997, ch. 283, § 1, p. 859.]

33-5109. Credits. — (1) A pupil may enroll in a course under the provisions of this chapter for secondary credit, for postsecondary credit or for dual credit. At the time a pupil enrolls in a course, the pupil shall designate the type of credit desired. A pupil taking several courses may designate some for secondary credit, some for postsecondary credit and some for dual credit.

(2) A school district shall grant academic credit to a pupil enrolled in a course for secondary credit if the pupil successfully completes the course. Four (4) semester college credits equal at least one (1) full year (two (2) semester credits) of high school credit in that subject. Fewer college credits may be prorated.

(3) The secondary credits granted to a pupil shall be counted toward the graduation requirements and subject area requirements of the school district. Evidence of successful completion of each course and secondary credits granted shall be included in the pupil's secondary school record. A pupil shall provide the school with a copy of the pupil's grade in each course taken for secondary credit under the provisions of this chapter. Upon the request of a pupil, the pupil's secondary school record shall also include evidence of successful completion and credits granted for a course taken for postsecondary credit. In either case, the record shall indicate that the credits were earned at a postsecondary institution.

(4) If a pupil enrolls in a postsecondary institution after leaving secondary school, the postsecondary institution shall award postsecondary credit for any course successfully completed for secondary credit at that institution. Other postsecondary institutions may award, after a pupil leaves secondary school, postsecondary credit for any courses successfully completed under the provisions of this chapter. An institution shall not charge a pupil for the award of credit.

(5) Postsecondary faculty instructing a course for postsecondary, secondary or dual credit shall not be required to obtain a certificate pursuant to chapter 12, title 33, Idaho Code, nor shall the postsecondary faculty be deemed an employee of a school district for any purpose under law. [I.C., § 33-5109, as added by 1997, ch. 283, § 1, p. 859; am. 1998, ch. 165, § 2, p. 559.]

33-5110. Financial arrangements. — (1) For a pupil enrolled in a course under the provisions of this chapter, the school district may make payments or partial payments according to the provisions of this section for courses that were taken for secondary credit.

(2) The school district superintendent shall not make payments to a postsecondary institution for a course taken for postsecondary credit only. The district superintendent shall not make payments to a postsecondary institution for a course from which a student officially withdraws during the first fourteen (14) days of the semester or for courses for audit. [I.C., § 33-5110, as added by 1997, ch. 283, § 1, p. 859.]

CHAPTER 52

PUBLIC CHARTER SCHOOLS

| SECTION. | SECTION. |
|---|---|
| 33-5201. Short title. | 33-5207. Charter appeal procedure. |
| 33-5202. Legislative intent. | 33-5208. Public charter school financial support. |
| 33-5202A. Definitions. | 33-5209. Enforcement — Revocation — Appeal. |
| 33-5203. Authorization — Limitations. | 33-5210. Application of school law — Accountability — Exemption from state rules. |
| 33-5204. Nonprofit corporation — Liability — Insurance. | 33-5211. Assistance with petitions — Information. |
| 33-5204A. Applicability of professional codes and standards — Limitations upon authority. | 33-5212. Review. |
| 33-5205. Petition to establish public charter school. | 33-5213. Public charter school commission. |
| 33-5205A. Transfer of charter. | 33-5214. [Reserved.] |
| 33-5206. Requirements and prohibitions upon approval of a public charter school. | 33-5215. Professional-technical regional public charter school. |

33-5201. Short title. — This chapter shall be known and may be cited as the “Public Charter Schools Act of 1998.” [I.C., § 33-5201, as added by 1998, ch. 92, § 1, p. 330.]

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of statute or regulation governing charter schools. 78 A.L.R.5th 533.

33-5202. Legislative intent. — It is the intent of the legislature to provide opportunities for teachers, parents, students and community members to establish and maintain public charter schools which operate independently from the existing traditional school district structure but within

the existing public school system as a method to accomplish any of the following:

- (1) Improve student learning;
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students;
- (3) Include the use of different and innovative teaching methods;
- (4) Utilize virtual distance learning and on-line learning;
- (5) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- (6) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system;
- (7) Hold the schools established under this chapter accountable for meeting measurable student educational standards. [I.C., § 33-5202, as added by 1998, ch. 92, § 1, p. 330; am. 2000, ch. 443, § 1, p. 1404; am. 2001, ch. 302, § 1, p. 1101; am. 2004, ch. 371, § 1, p. 1099.]

STATUTORY NOTES

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect

the validity of the remaining portions of this act."

Effective Dates. — Section 4 of S.L. 2000, ch. 443 declared an emergency. Approved April 17, 2000.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5202A. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) "Authorized chartering entity" means either the local board of trustees of a school district in this state, or the public charter school commission pursuant to the provisions of this chapter.

(2) "Charter" means the grant of authority approved by the authorized chartering entity to the board of directors of the public charter school.

(3) "Founder" means a person, including employees or staff of a public charter school, who makes a material contribution toward the establishment of a public charter school in accordance with criteria determined by the board of directors of the public charter school, and who is designated as such at the time the board of directors acknowledges and accepts such contribution. The criteria for determining when a person is a founder shall not discriminate against any person on any basis prohibited by the federal or state constitutions or any federal, state or local law. The designation of a person as a founder, and the admission preferences available to the children of a founder, shall not constitute pecuniary benefits.

(4) "Petition" means the document submitted by a person or persons to the authorized chartering entity to request the creation of a public charter school.

(5) "Professional-technical regional public charter school" means a public charter secondary school authorized under this chapter to provide programs in professional-technical education which meet the standards and qualifi-

cations established by the division of professional-technical education. A professional-technical regional public charter school may be approved by an authorized chartering entity and by the terms of its charter, shall operate in association with at least two (2) school districts. Notwithstanding the provisions of section 33-5206(1), Idaho Code, participating school districts need not be contiguous.

(6) "Public charter school" means a school that is authorized under this chapter to deliver public education in Idaho.

(7) "Traditional public school" means any school existing or to be built that is operated and controlled by a school district in this state.

(8) "Virtual school" means a school that delivers a full-time, sequential program of synchronous and/or asynchronous instruction primarily through the use of technology via the internet in a distributed environment. Schools classified as virtual must have an online component to their school with online lessons and tools for student and data management. [I.C., § 33-5202A, as added by 2004, ch. 371, § 2, p. 1099; am. 2005, ch. 376, § 1, p. 1201; am. 2007, ch. 246, § 1, p. 724; am. 2008, ch. 105, § 1, p. 288.]

STATUTORY NOTES

Cross References. — Public charter school commission, § 33-5213.

Prior Laws. — Section 2 of S.L. 2004, ch. 370 also enacted a § 33-5202A, which was redesignated by the compiler as § 33-5202B and was repealed by S.L. 2005, ch. 25, § 57.

Amendments. — The 2007 amendment, by ch. 246, added subsection (5) and redesignated the subsequent subsections accordingly.

The 2008 amendment, by ch. 105, deleted former subsection (7), which defined "Public virtual school," redesignated former subsection (8) as present subsection (7), and added present subsection (8).

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5203. Authorization — Limitations. — (1) The creation of public charter schools is hereby authorized. Public charter schools shall be part of the state's program of public education.

(2) The number of new public charter schools which may begin educational instruction in any one (1) school year shall be limited in number in accordance with the following:

(a) Not more than six (6) new public charter schools may begin educational instruction in any one (1) school year, and

(b) Not more than one (1) new public charter school may begin educational instruction that is physically located within any one (1) school district in any one (1) school year, and

(c) No whole school district may be converted to a charter district or any configuration which includes all schools as public charter schools, and

(d) Public virtual charter schools approved by the public charter school commission are not included in paragraph (b) of this subsection, and

(e) The transfer of a charter for a school already authorized pursuant to section 33-5205A, Idaho Code, is not included in the limit on the annual number of public charter schools approved to begin educational instruction in any given school year as set forth in paragraph (a) of this subsection, and

(f) A petition must be received by the initial authorized chartering entity no later than September 1 to be eligible to begin instruction the first complete school year following receipt of the petition, and

(g) To begin operations, a newly-chartered public school must be authorized by no later than January 1 of the previous school year.

(3) A public charter school may be formed either by creating a new public charter school, which charter may be approved by any authorized chartering entity, or by converting an existing traditional public school to a public charter school, which charter may only be approved by the board of trustees of the school district in which the existing public school is located.

(4) No charter shall be approved under this chapter:

(a) Which provides for the conversion of any existing private or parochial school to a public charter school.

(b) To a for-profit entity or any school which is operated by a for-profit entity, provided however, nothing herein shall prevent the board of directors of a public charter school from legally contracting with for-profit entities for the provision of products or services that aid in the operation of the school.

(c) By the board of trustees of a school district if the public charter school's physical location is outside the boundaries of the authorizing school district. The limitation provided in this subsection (4)(c) does not apply to a home-based public virtual school.

(5) A public virtual school charter may be approved by the public charter school commission. In addition, a charter may also be approved by the state board of education pursuant to section 33-5207(5)(b), Idaho Code.

(6) The state board of education shall adopt rules, subject to law, to establish a consistent application and review process for the approval and maintenance of all public charter schools.

(7) The state board of education shall be responsible to designate those public charter schools that will be identified as a local education agency (LEA) as such term is defined in 34 CFR 300.18; however, only public charter schools chartered by the board of trustees of a school district may be included in that district's LEA. [I.C., § 33-5203, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 1, p. 623; am. 2004, ch. 371, § 3, p. 1099; am. 2005, ch. 255, § 7, p. 782; am. 2005, ch. 376, § 2, p. 1201; am. 2006, ch. 16, § 4, p. 42.]

STATUTORY NOTES

Cross References. — Public charter school commission, § 33-5213.

Amendments. — The 2006 amendment, by ch. 16, redesignated the last paragraph of subsection (2).

Federal References. — Part 300 of Title

34 of CFR was revised in 2006, and the definition of "local education agency," referred to in subsection (7), is now found in 34 C.F.R. 300.28.

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The

provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 8 of S.L. 1999,

ch. 244 declared an emergency. Approved March 24, 1999.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 9 of S.L. 2005, ch. 255 provided that this section should take effect on and after December 31, 2005.

33-5204. Nonprofit corporation — Liability — Insurance. — (1) A public charter school shall be organized and managed under the Idaho nonprofit corporation act. The board of directors of a public charter school shall be deemed public agents authorized by a public school district, the public charter school commission, or the state board of education to control the public charter school, but shall function independently of any school board of trustees in any school district in which the public charter school is located, or independently of the public charter school commission except as provided in the charter. For the purposes of section 59-1302(15), Idaho Code, a public charter school created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by a public charter school are exempt from payment of the sales and use tax. A public charter school and the board of directors of a public charter school are subject to the provisions of:

- (a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;
- (b) Chapter 2, title 59, Idaho Code, on prohibitions against contracts with officers;
- (c) Chapter 7, title 59, Idaho Code, on ethics in government;
- (d) Chapter 23, title 67, Idaho Code, on open public meetings; and
- (e) Chapter 3, title 9, Idaho Code, on disclosure of public records

in the same manner that a traditional public school and the board of school trustees of a school district are subject to those provisions.

(2) A public charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a traditional public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code. The authorized chartering entity that approves a public school charter shall have no liability for the acts, omissions, debts or other obligations of a public charter school, except as may be provided in the charter. A local public school district shall have no liability for the acts, omissions, debts or other obligations of a public charter school located in its district that has been approved by an authorized chartering entity other than the board of trustees of the local school district.

(3) Nothing in this chapter shall prevent the board of directors of a public charter school, operating as a nonprofit corporation, from borrowing money to finance the purchase or lease of school building facilities, equipment and furnishings of those school building facilities. Subject to the terms of a contractual agreement between the board and a lender, nothing herein shall

prevent the board from using the facility, its equipment and furnishings, as collateral for the loan.

(4) Public charter schools shall secure insurance for liability and property loss.

(5) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the authorized chartering entity and charter, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection (5). The board of directors of a public charter school may accept and award contracts involving the public charter school to businesses in which the director or a person related to him by blood or marriage within the second degree has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of a public charter school for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to any public charter school, shall not be deemed to be a contract pertaining to the maintenance or conduct of a public charter school and authorized chartering entity within the meaning of this section; nor shall the payment by any public charter school board of directors of compensation to any bank or trust company for services rendered in the transaction of any banking business with such public charter school board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of any public charter school to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or will require, the payment or delivery of any public charter school funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(6) When any relative of any director or relative of the spouse of a director related by affinity or consanguinity within the second degree is to be considered for employment in a public charter school, such director shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined. [I.C., § 33-5204, as added by 1998, ch. 92, § 1, p. 330; am. 1998, ch. 201, § 1, p. 717; am. 1999, ch. 244, § 2, p. 623; am. 2000, ch. 282, § 1, p. 905; am. 2000, ch. 443, § 2, p. 1404; am. 2001, ch. 64, § 1, p. 121; am. 2002, ch. 293, § 1, p. 845; am. 2004, ch. 371, § 4, p. 1099; am. 2005, ch. 376, § 3, p. 1201.]

STATUTORY NOTES

Cross References. — Idaho nonprofit corporation act, § 30-3-1 et seq.

Public charter school commission, § 33-5213.

Amendments. — This section was enacted by S.L. 1998, ch. 92, § 1, effective July 1, 1998, and subsequently amended by S.L.

1998, ch. 201, § 1, effective July 1, 1998. The amendment by ch. 201, § 1, added the fourth sentence in subsection (1).

This section was amended by two 2000 acts — ch. 282, § 1, effective April 13, 2000, and ch. 443, § 2, effective April 17, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 282 § 1, added subdivision (3) and redesignated former subdivision (3) as subdivision (4).

The 2000 amendment, by ch. 443 § 2, inserted "but shall function independently of any school board of trustees, except as provided in the charter" following "to control the charter school" in subsection (1).

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any per-

son or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 4 of S.L. 2000, ch. 443 declared an emergency. Approved April 17, 2000.

Section 2 of S.L. 2001, ch. 64 declared an emergency. Approved March 20, 2001.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

JUDICIAL DECISIONS

Action for Libel and Slander.

Charter school's claim that a parent tortiously interfered with its responsibilities under the Idaho Public Charter Schools Act was a non-existent cause of action and unsupported by the common law, Idaho statutes, or Idaho case law, and the school could not maintain an action for libel and slander against an individual when that individual

was speaking out on an issue of public concern, where the parent's letters and criticisms, which addressed the manner in which officials at the charter school performed their duties and the school's policies and programs, were clearly an expression of her opinion on a matter of public concern. *Nampa Charter Sch., Inc. v. Delapaz*, 140 Idaho 23, 89 P.3d 863 (2004).

33-5204A. Applicability of professional codes and standards — Limitations upon authority. — (1) Every person who serves in a public charter school, either as an employee, contractor, or otherwise, in the capacity of teacher, supervisor, administrator, education specialist, school nurse or librarian, must comply with the professional codes and standards approved by the state board of education, including standards for ethics or conduct.

(2) Every employee of a public charter school and every member of the board of directors of a public charter school, whether compensated or noncompensated, shall comply with the standards of ethics or conduct applicable to public officials including, but not limited to, chapter 7, title 59, Idaho Code, except that section 59-704A, Idaho Code, which permits a noncompensated public official to have an interest in a contract made or entered into by the board of which he is a member under certain conditions, shall not apply to the board of directors of a public charter school. A member of the board of directors of a public charter school is prohibited from receiving a personal pecuniary benefit, directly or indirectly, pertaining to a contractual relationship with the public charter school. [I.C., § 33-5204A, as added by 2004, ch. 371, § 5, p. 1099.]

STATUTORY NOTES

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5205. Petition to establish public charter school. — (1) Any group of persons may petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school.

(a) A petition to establish a new public charter school, including a public virtual charter school, shall be signed by not fewer than thirty (30) qualified electors of the attendance area designated in the petition. Proof of elector qualifications shall be provided with the petition.

(b) A petition to establish a new public virtual school must be submitted directly to the public charter school commission. A petition to establish a new public charter school, other than a new public virtual school, shall first be submitted to the local board of trustees in which the public charter school will be located. A petition shall be considered to be received by an authorized chartering entity as of the next scheduled meeting of the authorized chartering entity after submission of the petition.

(c) The board of trustees may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter; or (iii) refer the petition to the public charter school commission, but such referral shall not be made until the local board has documented its due diligence in considering the petition. Such documentation shall be submitted with the petition to the public charter school commission. If the petitioners and the local board of trustees have not reached mutual agreement on the provisions of the charter, after a reasonable and good faith effort, within sixty (60) days from the date the charter petition is received, the petitioners may withdraw their petition from the local board of trustees and may submit their charter petition to the public charter school commission, provided it is signed by thirty (30) qualified electors as required by subsection (1)(a) of this section. Documentation of the reasonable and good faith effort between the petitioners and the local board of trustees must be submitted with the petition to the public charter school commission.

(d) The public charter school commission may either: (i) consider the petition and approve the charter; or (ii) consider the petition and deny the charter.

(e) A petition to convert an existing traditional public school shall be submitted to the board of trustees of the district in which the school is located for review and approval. The petition shall be signed by not fewer than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not fewer than sixty percent (60%) of the students currently attending the school to be converted. Each petition submitted to convert an existing school or to establish a new charter school shall contain a copy of the articles of incorporation and the bylaws of the nonprofit corporation, which shall be deemed incorporated into the petition.

(2) Not later than sixty (60) days after receiving a petition signed by thirty (30) qualified electors as required by subsection (1)(a) of this section, the authorized chartering entity shall hold a public hearing for the purpose of discussing the provisions of the charter, at which time the authorized chartering entity shall consider the merits of the petition and the level of

employee and parental support for the petition. In the case of a petition submitted to the public charter school commission, such public hearing must be not later than sixty (60) days after receipt of the petition, which may be extended to ninety (90) days if both parties agree to an extension, and the public hearing shall also include any oral or written comments that an authorized representative of the school district in which the proposed public charter school would be physically located may provide regarding the merits of the petition and any potential impacts on the school district. Following review of the petition and the public hearing, the authorized chartering entity shall either approve or deny the charter within sixty (60) days after the date of the public hearing, provided however, that the date may be extended by an additional sixty (60) days if the petition fails to contain all of the information required in this section, or if both parties agree to the extension. This public hearing shall be an opportunity for public participation and oral presentation by the public. This hearing is not a contested case hearing as described in chapter 52, title 67, Idaho Code.

(3) An authorized chartering entity may approve a charter under the provisions of this chapter only if it determines that the petition contains the requisite signatures, the information required by subsections (4) and (5) of this section, and additional statements describing all of the following:

(a) The proposed educational program of the public charter school, designed among other things, to identify what it means to be an “educated person” in the twenty-first century, and how learning best occurs. The goals identified in the program shall include how all educational thoroughness standards as defined in section 33-1612, Idaho Code, shall be fulfilled.

(b) The measurable student educational standards identified for use by the public charter school. “Student educational standards” for the purpose of this chapter means the extent to which all students of the public charter school demonstrate they have attained the skills and knowledge specified as goals in the school’s educational program.

(c) The method by which student progress in meeting those student educational standards is to be measured.

(d) A provision by which students of the public charter school will be tested with the same standardized tests as other Idaho public school students.

(e) A provision which ensures that the public charter school shall be state accredited as provided by rule of the state board of education.

(f) The governance structure of the public charter school including, but not limited to, the person or entity who shall be legally accountable for the operation of the public charter school, and the process to be followed by the public charter school to ensure parental involvement.

(g) The qualifications to be met by individuals employed by the public charter school. Instructional staff shall be certified teachers as provided by rule of the state board of education.

(h) The procedures that the public charter school will follow to ensure the health and safety of students and staff.

(i) A plan for the requirements of section 33-205, Idaho Code, for the denial of school attendance to any student who is an habitual truant, as

defined in section 33-206, Idaho Code, or who is incorrigible, or whose conduct, in the judgment of the board of directors of the public charter school, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public charter school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state.

(j) Admission procedures, including provision for overenrollment. Such admission procedures shall provide that the initial admission procedures for a new public charter school, including provision for overenrollment, will be determined by lottery or other random method, except as otherwise provided herein. If initial capacity is insufficient to enroll all pupils who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; second, to siblings of pupils already selected by the lottery or other random method; and third, an equitable selection process such as by lottery or other random method. If capacity is insufficient to enroll all pupils for subsequent school terms, who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to pupils returning to the public charter school in the second or any subsequent year of its operation; second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; third, to siblings of pupils already enrolled in the public charter school; and fourth, an equitable selection process such as by lottery or other random method. There shall be no carryover from year to year of the list maintained to fill vacancies. A new lottery shall be conducted each year to fill vacancies which become available.

(k) The manner in which an annual audit of the financial and programmatic operations of the public charter school is to be conducted.

(l) The disciplinary procedures that the public charter school will utilize, including the procedure by which students may be suspended, expelled and reenrolled, and the procedures required by section 33-210, Idaho Code.

(m) A provision which ensures that all staff members of the public charter school will be covered by the public employee retirement system, federal social security, unemployment insurance, worker's compensation insurance, and health insurance.

(n) The public school attendance alternative for students residing within the school district who choose not to attend the public charter school.

(o) A description of the transfer rights of any employee choosing to work in a public charter school that is approved by the board of trustees of a school district, and the rights of such employees to return to any noncharter school in the same school district after employment at such charter school.

(p) A provision which ensures that the staff of the public charter school shall be considered a separate unit for purposes of collective bargaining.

(q) The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal individuals with disabilities education act, including disciplinary procedures for these students.

(r) A plan for working with parents who have students who are dually enrolled pursuant to section 33-203, Idaho Code.

(s) The process by which the citizens in the area of attendance shall be made aware of the enrollment opportunities of the public charter school.

(t) A proposal for transportation services as required by section 33-5208(4), Idaho Code.

(u) A plan for termination of the charter by the board of directors, to include:

(i) Identification of who is responsible for dissolution of the charter school;

(ii) A description of how payment to creditors will be handled;

(iii) A procedure for transferring all records of students with notice to parents of how to request a transfer of student records to a specific school; and

(iv) A plan for the disposal of the public charter school's assets.

(4) The petitioner shall provide information regarding the proposed operation and potential effects of the public charter school including, but not limited to, the facilities to be utilized by the public charter school, the manner in which administrative services of the public charter school are to be provided and the potential civil liability effects upon the public charter school and upon the authorized chartering entity.

(5) At least one (1) person among a group of petitioners of a prospective public charter school shall attend a public charter school workshop offered by the state department of education. The state department of education shall provide notice of dates and locations when workshops will be held, and shall provide proof of attendance to workshop attendees. Such proof shall be submitted by the petitioners to an authorized chartering entity along with the charter petition.

[(6)](5) The public charter school commission may approve a charter for a public virtual school under the provisions of this chapter only if it determines that the petition contains the requirements of subsections (3) and (4) of this section and the additional statements describing the following:

(a) The learning management system by which courses will be delivered;

(b) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;

(c) A plan for the provision of professional development specific to the public virtual school environment;

(d) The means by which public virtual school students will receive appropriate teacher-to-student interaction, including timely, frequent feedback about student progress;

(e) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools

shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;

(f) A plan for the provision of technical support relevant to the delivery of online courses;

(g) The means by which the public virtual school will provide opportunity for student-to-student interaction; and

(h) A plan for ensuring equal access to all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework. [I.C., § 33-5205, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 3, p. 623; am. 2000, ch. 443, § 3, p. 1404; am. 2004, ch. 371, § 6, p. 1099; am. 2004, ch. 375, § 1, p. 1117; am. 2005, ch. 376, § 4, p. 1201; am. 2008, ch. 105, § 2, p. 289; am. 2008, ch. 157, § 1, p. 451.]

STATUTORY NOTES

Cross References. — Public charter school commission, § 33-5213.

Amendments. — This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 371, substituted “public charter school” for “charter school” throughout the section; in subsection (1), rewrote the first clause of the introductory sentence; designated the former second sentence as paragraph (b), designated the former third sentence as paragraph (a), rewriting that sentence and adding the second sentence thereof; substituted “the disciplinary procedures that the public charter school will utilize, including the procedure” for “the procedures” at the beginning of paragraph (3)(k); substituted “same district as the public charter school, as provided for in section 33-203(7), Idaho Code” for “district as provided for in chapter 2, title 33, Idaho Code” at the end of paragraph (3)(r); and added paragraph (3)(s).

The 2004 amendment, by ch. 275, added the last sentence in paragraph (1)(e).

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 105, added subsection [(6)](5).

The 2008 amendment, by ch. 157, in subsection (1)(c), in the first sentence, added “but such referral shall not be made until the local board has documented its due diligence in considering the petition,” and added the second sentence; in the introductory paragraph in subsection (3), inserted the reference to subsection (5); and added subsection (5).

Federal References. — The federal individuals with disabilities education act, referred to in paragraph (3)(q), is codified as 20 U.S.C.S. § 1400 et seq.

Compiler’s Notes. — Section 13 of S.L. 2004, ch. 371 read: “SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates. — Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 4 of S.L. 2000, ch. 443 declared an emergency. Approved April 17, 2000.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5205A. Transfer of charter. — (1) A charter for a public charter school approved by the board of trustees of a local school district may be transferred to, and placed under the chartering authority of, the public charter school commission if the board of trustees of such local school district, the public charter school commission, and the board of directors of the public charter school all agree to such transfer, including any revision to the charter that may be required in connection with such transfer. A charter for a public charter school approved by the public charter school commission may be transferred to, and placed under the chartering authority of, the

board of trustees of the local school district in which the public charter school is located if the public charter school commission, the board of trustees of such local school district, and the board of directors of the public charter school all agree to such transfer, including any revisions to the charter that may be required in connection with such transfer. A request to transfer a charter may be initiated by the board of directors of a public charter school or by the authorized chartering entity with chartering authority over the charter of such public charter school.

(2) A public charter school, approved by the public charter school commission, which has a primary attendance area located within more than one (1) school district, may transfer the physical location of its public charter school within its primary attendance area to locate the facilities within the boundaries of another school district within the approved primary attendance area if the public charter school commission, the board of trustees of each of the relevant school districts and the board of directors of the public charter school all approve of such transfer of facilities location, and if the public charter school commission approves any revisions to the charter that may be required in connection with such transfer.

(3) If all parties fail to reach agreement in regard to the request to transfer a charter, as required herein, then the matter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in section 33-5207(5)(b), Idaho Code. A transferred charter school shall not be considered a new public charter school, and shall not be subject to the limitations of section 33-5203(2), Idaho Code. [I.C., § 33-5205A, as added by 2005, ch. 376, § 5, p. 1201; am. 2008, ch. 171, § 1, p. 471.]

STATUTORY NOTES

Cross References. — Public charter school commission, § 33-5213.

by ch. 171, added the subsection (1) and (3) designations to existing provisions and added subsection (2).

Amendments. — The 2008 amendment,

33-5206. Requirements and prohibitions upon approval of a public charter school. — (1) In addition to any other requirements imposed in this chapter, a public charter school shall be nonsectarian in its programs, affiliations, admission policies, employment practices, and all other operations, shall not charge tuition, levy taxes or issue bonds, and shall not discriminate against any student on any basis prohibited by the federal or state constitutions or any federal, state or local law. Admission to a public charter school shall not be determined according to the place of residence of the student, or of the student's parent or guardian within the district, except that a new or conversion public charter school established under the provisions of this chapter shall adopt and maintain a policy giving admission preference to students who reside within the attendance area of that public charter school. The attendance area of a charter school, as described in the petition, shall be composed of compact and contiguous area. For the purposes of this section, if services are available to students throughout the state, the state of Idaho is considered a compact and contiguous area.

(2) No board of trustees shall require any employee of the school district to be involuntarily assigned to work in a public charter school.

(3) Certified teachers in a public charter school shall be considered public school teachers. Educational experience shall accrue for service in a public charter school and such experience shall be counted by any school district for any teacher who has been employed in a public charter school.

(4) Employment of charter school teachers and administrators shall be on written contract in form as approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder.

(5) No board of trustees shall require any student enrolled in the school district to attend a public charter school.

(6) Upon approval of the petition by the authorized chartering entity, the petitioner shall provide written notice of that approval, including a copy of the approved petition, to the state board of education. For the purpose of implementing the provisions of section 33-5203(2), Idaho Code, the state board of education shall assign a number to each petition it receives. Petitions shall be numbered based on the chronological order in which notice of the approved petition is received by the state board of education.

(7) Each public charter school shall annually submit a report to the authorized chartering entity which approved its charter. The report shall contain the audit of the fiscal and programmatic operations as required in section 33-5205(3)(k), Idaho Code, a report on student progress based on the public charter school's student educational standards identified in section 33-5205(3)(b), Idaho Code, and a copy of the public charter school's accreditation report.

(8) When a charter is revoked pursuant to section 33-5209, Idaho Code, or the board of directors of the public charter school terminates the charter, the assets of the public charter school remaining after all debts of the public charter school have been satisfied must be returned to the authorized chartering entity for distribution in accordance with applicable law. [I.C., § 33-5206, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 4, p. 623; am. 2001, ch. 209, § 1, p. 831; am. 2004, ch. 220, § 1, p. 658; am. 2004, ch. 371, § 7, p. 1099; am. 2004, ch. 376, § 1, p. 1120; am. 2005, ch. 376, § 6, p. 1201.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Amendments. — This section was amended by three 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 220, added the last two sentences of subsection (1).

The 2004 amendment, by ch. 371, substituted "public charter school" for "charter school" throughout the section, inserted "public charter" preceding the reference to "school" at the end of subsection (1), substituted "authorized chartering entity" for "board of trust-

ees" in the first sentences of subsections (6) and (7), and deleted the former second sentence of the latter subsection, which had read, "In the case of a new charter school whose charter was granted by the state board of education pursuant to section 33-507, Idaho Code, the annual report shall be submitted to the state board of education."

The 2004 amendment, by ch. 376, redesignated former subsections (4) through (6) as subsections (5) through (7), and inserted subsection (4).

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The

provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

JUDICIAL DECISIONS

Attorney Fees Not Allowed.

While a school district was a taxing district within the meaning of § 12-117 and § 33-5206(1) specifically provided that a charter school shall not levy taxes; thus, while the school was a charter school and part of the

school district, it was not a taxing district and the district judge did not err in refusing to award the parent attorney fees under § 12-117(1). *Nampa Charter Sch., Inc. v. Delapaz*, 140 Idaho 23, 89 P.3d 863 (2004).

33-5207. Charter appeal procedure. — (1) If a local school board of trustees, acting in its capacity as an authorized chartering entity, approves a petition for the conversion of an existing traditional public school within the school district over the objection of thirty (30) or more persons or employees of the district, or if an authorized chartering entity denies a petition for the establishment of a new public charter school for any reason including, but not limited to, failure by the petitioner to follow procedures or for failure to provide required information, then such decisions may be appealed to the state superintendent of public instruction within thirty (30) days of the date of the written decision, at the request of persons opposing the conversion of an existing traditional public school, or at the request of the petitioner whose request for a new charter was denied.

(2) The state superintendent of public instruction shall select a hearing officer to review the action of the authorized chartering entity, pursuant to section 67-5242, Idaho Code. The hearing officer shall, within thirty (30) days of receipt of the request, review the charter petition and convene a public hearing regarding the charter petition. Within ten (10) days of the public hearing, the hearing officer shall submit a written recommendation to the authorized chartering entity and to the persons requesting the review. The recommendation by the hearing officer either to affirm or reverse the decision of the authorized chartering entity shall be based upon the standards and criteria contained in this chapter and upon any public charter school rules adopted by the state board of education. The recommendation shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the recommendations based on the applicable statutory provisions and factual information contained in the record.

(3) Within thirty (30) days following receipt of the hearing officer's written recommendation, the authorized chartering entity shall hold a meeting open to the public for the purpose of reviewing the hearing officer's written recommendation. Within ten (10) days of such meeting, the authorized chartering entity shall either affirm or reverse its initial decision. The authorized chartering entity's decision shall be in writing and contain findings which explain the reasons for its decision.

(4) If, upon reconsideration of a decision to approve the conversion of a traditional public school to a public charter school, the local school board:

(a) Affirms its initial decision to authorize such conversion, the charter shall be approved and there shall be no further appeal.

(b) Reverses its initial decision and denies the conversion, that decision is final and there shall be no further appeal.

(5) If, upon reconsideration of a decision to deny a petition for a public charter school, the authorized chartering entity:

(a) Reverses its initial decision and approves the public charter school petition, there shall be no further appeal.

(b) Affirms its initial decision denying the public charter school petition, the board of directors of the nonprofit corporation identified in the petition may appeal to the state board of education. The state board of education shall hold a public hearing within a reasonable time after receiving notice of such appeal but no later than sixty (60) calendar days after receiving such notice, and after the public hearing, shall take any of the following actions: (i) approve or deny the petition for the public charter school, provided that the state board of education shall only approve the petition if it determines that the authorized chartering entity failed to appropriately consider the charter petition, or if it acted in an arbitrary manner in denying the petition; (ii) remand the matter back to the authorized chartering entity, which shall have authority to further review and act on such matter as directed by the state board of education; or (iii) redirect the matter to another authorized chartering entity for further review as directed by the state board of education. Such public hearing shall be conducted pursuant to procedures as set by the state board of education.

(6) A public charter school for which a charter is approved by the state board of education shall qualify fully as a public charter school for all funding and other purposes of this chapter. The public charter school commission shall assume the role of the authorized chartering entity for any charter approved by the state board of education as provided in subsection (5)(b) of this section. Employees of a public charter school approved by the state board of education shall not be considered employees of the local school district in which the public charter school is located, nor of the state board of education, nor of the commission.

(7) The decision of the state board of education shall be subject to review pursuant to chapter 52, title 67, Idaho Code. Nothing in this section shall prevent a petitioner from bringing a new petition for a public charter school at a later time.

(8) There shall be no appeal of a decision by a local school board of trustees which denies the conversion of an existing traditional public school within that district to a public charter school, or by an authorized chartering entity which approves a petition for a public charter school. [I.C., § 33-5207, as added by 1998, ch. 92, § 1, p. 330; am. 1998, ch. 201, § 2, p. 717; am. 2004, ch. 371, § 8, p. 1099; am. 2005, ch. 376, § 7, p. 1201.]

STATUTORY NOTES

Cross References. — Public charter school commission, § 33-5213.

State superintendent of public instruction, § 67-1501 et seq.

Amendments. — This section was enacted by S.L. 1998, ch. 92, § 1, effective July 1, 1998, and subsequently amended by S.L. 1998, ch. 201, § 2, effective July 1, 1998. The amendment by ch. 201, § 2, added the third sentence in subdivision (5)(b) and inserted “nor of the state board of education” near the end of subsection (6).

Compiler’s Notes. — Section 13 of S.L. 2004, ch. 371 read: “SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates. — Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5208. Public charter school financial support. — Except as provided in subsection (8) of this section, from the state educational support program the state department of education shall make the following apportionment to each public charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each public charter school shall be calculated as if it were a separate school according to the schedules in section 33-1002(4), Idaho Code, except that public charter schools with fewer than one hundred (100) secondary ADA shall use a divisor of twelve (12) and the minimum units shall not apply, and no public charter school shall receive an increase in support units that exceeds the support units it received in the prior year by more than thirty (30). Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code. Provided however, any public charter school that is formed by the conversion of an existing traditional public school shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no lower than the divisors of the school district in which the traditional public school is located, for each category of pupils listed.

(2) Special education. For each student enrolled in the public charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that would have been apportioned for that student to the school district in which the public charter school is located.

(3) Alternative school support. Public charter schools may qualify under the provisions of sections 33-1002 and 33-1002C, Idaho Code, provided the public charter school meets the necessary statutory requirements, and students qualify for attendance at an alternative school as provided by rule of the state board of education.

(4) Transportation support. Support shall be paid to the public charter school as provided in chapter 15, title 33, Idaho Code, and section 33-1006, Idaho Code. Each public charter school shall furnish the department with an enrollment count as of the first Friday in November, of public charter school students living more than one and one-half (1 1/2) miles from the school. For charter schools in the initial year of operation, the petition shall

include a proposal for transportation services with an estimated first year cost. The state department of education is authorized to include in the annual appropriation to the charter school eighty percent (80%) of the estimated transportation cost. The final appropriation payment in July shall reflect eighty-five percent (85%) of the actual cost.

(5) Payment schedule. The state department of education is authorized to make an advance payment of twenty-five percent (25%) of a public charter school's estimated annual apportionment for its first year of operation, and each year thereafter, provided the public charter school has an increase of student population in any given year of twenty (20) students or more, to assist the school with initial start-up costs or payroll obligations.

(a) For a state public charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the public charter school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the one-time advance payment made for the first year of operation, shall be made to the public charter school in the same manner as other traditional public schools in accordance with the provisions of section 33-1009, Idaho Code.

A public charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to public charter schools: section 33-1003B, Idaho Code, relating to guaranteed minimum support; that portion of section 33-1004, Idaho Code, relating to reduction of the administrative and instructional staff allowance when there is a discrepancy between the number allowed and the number actually employed; and section 33-1004E, Idaho Code, for calculation of district staff indices.

(6) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a public charter school.

(7) Nothing in this chapter shall prevent a public charter school from applying for federal grant moneys.

(8)(a) For the period July 1, 2003, through June 30, 2005, all public virtual schools shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no higher than the median divisor shown for each respective category of pupils, among the possible divisors listed, for each respective category of pupils that contains more than one (1) divisor. If there is an even number of possible divisors listed for a particular category of pupils, then the lesser of the two (2) median divisors shall be used. For the period July 1, 2005, through June 30, 2007, all public virtual schools shall be assigned divisors, pursuant to section 33-1002, Idaho Code, that are no higher than the second highest divisor shown, among the possible divisors listed, for each respective category of pupils that contains more than one (1) divisor. The divisor provisions contained

herein shall only be applicable to the number of pupils in average daily attendance in such public virtual schools for the period July 1, 2003, through June 30, 2004. If the number of pupils in average daily attendance in any particular category of pupils increases, during the period July 1, 2004, through June 30, 2005, to a number above that which existed in the prior fiscal year, then those additional pupils in average daily attendance shall be assigned the divisor, pursuant to section 33-1002, Idaho Code, that would have otherwise been assigned to the school district or public charter school had this section not been in force.

(b) Each student in attendance at a public virtual school shall be funded based upon either the actual hours of attendance in the public virtual school on a flexible schedule, or the percentage of coursework completed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

(c) All federal educational funds shall be administered and distributed to public charter schools, including public virtual schools, that have been designated by the state board of education as a local education agency (LEA), as provided in section 33-5203(7), Idaho Code.

(9) Nothing in this section prohibits separate face-to-face learning activities or services. [I.C., § 33-5208, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 5, p. 623; am. 2001, ch. 114, § 1, p. 405; am. 2002, ch. 109, § 1, p. 307; am. 2004, ch. 370, § 3, p. 1094; am. 2004, ch. 374, § 1, p. 1116; am. 2005, ch. 255, § 6, p. 782; am. 2005, ch. 376, § 8, p. 1201; am. 2006 (1st E.S.), ch. 1, § 13; am. 2007, ch. 350, § 7, p. 1028.]

STATUTORY NOTES

Cross References. — Educational support program, § 33-1002.

Exceptional education report, § 33-1007.

Amendments. — This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 370 substituted “public charter school” for “charter school” throughout the section, and added the exception at the beginning of the introductory language and the proviso at the end of subsection (1).

The 2004 amendment, by ch. 374 added the third, fourth and fifth sentences of subdivision (4).

This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 255, § 6 added the ending to the first sentence in subsection (1) beginning with “and no public charter school.”

The 2005 amendment, by ch. 376, § 8, in subsection (8)(c) deleted “At the discretion of the board of directors, and subject to any specific limitations in its charter” at the beginning, inserted “charter schools, including public” before “virtual schools,” and substi-

tuted the ending beginning “that have been designated” for “that enroll students from multiple school districts in the same manner as an independent local education agency (LEA).”

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “section 33-1002(4)” for “section 33-1002 6.” in the first sentence in subsection (1).

The 2007 amendment, by ch. 350, substituted “thirty (30)” for “twenty (20)” at the end of the first sentence in subsection (1).

Legislative Intent. — Section 4 of S.L. 2007, ch. 350 provided “It is the legislative intent that public school employee benefits paid by the state, pursuant to Section 33-1004F, Idaho Code, be paid for all eligible employees that a school district or public charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

Compiler’s Notes. — Section 33-1003B, referred to in the last paragraph of subsection (5), was repealed by S.L. 2005, ch. 255, § 10.

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as

the 'Property Tax Relief Act of 2006'."

Effective Dates. — Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 4 of S.L. 2004, ch. 370 declared an emergency. Approved April 1, 2004.

33-5209. Enforcement — Revocation — Appeal. — (1) An authorized chartering entity shall ensure that all public charter schools for which it approved petitions, or for which it has responsibility, operate in accordance with the approved charter. A public charter school or the authorized chartering entity may enter into negotiations to revise its charter at any time. A public charter school may petition to revise its charter at any time. The authorized chartering entity's review of the revised petition shall be limited in scope solely to the proposed revisions.

(2) If the authorized chartering entity has reason to believe that the public charter school has done any of the following, it shall provide the public charter school written notice of the defect and provide a reasonable opportunity to cure the defect:

- (a) Committed a material violation of any condition, standard or procedure set forth in the approved charter;
- (b) Failed to substantially meet any of the student educational standards identified in the approved charter;
- (c) Failed to meet generally accepted accounting standards of fiscal management;
- (d) Failed to demonstrate fiscal soundness. In order to be fiscally sound, the public charter school must be:
 - (i) Fiscally stable on a short-term basis, that is, able to service all upcoming obligations; and
 - (ii) Fiscally sustainable as a going concern, that is, able to reasonably demonstrate its ability to service any debt and meet its financial obligations for the next fiscal year;
- (e) Failed to submit required reports to the authorized chartering entity governing the charter; or
- (f) Violated any provision of law.

(3) A charter may be revoked by the authorized chartering entity if the public charter school has failed to cure a defect after receiving reasonable notice and having had a reasonable opportunity to cure the defect. Revocation may not occur until the public charter school has been afforded a public hearing and a reasonable opportunity to cure the defect, unless the authorized chartering entity reasonably determines that the continued operation of the public charter school presents an imminent public safety issue, in which case the charter may be revoked immediately. Public hearings shall be conducted by the governing authorized chartering entity, or such other person or persons appointed by the authorized chartering entity to conduct public hearings and receive evidence as a contested case in accordance with section 67-5242, Idaho Code. Reasonable notice and opportunity to reply shall include, at a minimum, written notice setting out the basis for consideration of revocation, a period of not less than thirty (30) days within which the public charter school can reply in writing, and a public hearing within thirty (30) days of the receipt of the written reply.

(4) A decision to revoke a charter or to deny a revision of a charter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in section 33-5207(5)(b), Idaho Code. In the event the state board of education reverses a decision of revocation, the public charter school subject to such action shall then be placed under the chartering authority of the commission. [I.C., § 33-5209, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 65, § 1, p. 122; am. 2004, ch. 371, § 9, p. 1099; am. 2005, ch. 376, § 9, p. 1201; am. 2008, ch. 251, § 1, p. 737.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 251, added present subsection (2)(d) and made related redesignations.

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any per-

son or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5210. Application of school law — Accountability — Exemption from state rules. — (1) All public charter schools are under the general supervision of the state board of education.

(2) Every authorized chartering entity that approves a charter shall be responsible for ensuring that each public charter school program approved by that authorized chartering entity meets the terms of the charter, complies with the general education laws of the state unless specifically directed otherwise in this chapter 52, title 33, Idaho Code, and operates in accordance with the state educational standards of thoroughness as defined in section 33-1612, Idaho Code.

(3) Each charter school shall comply with the financial reporting requirements of section 33-701, subsections 5. through 10., Idaho Code, in the same manner as those requirements are imposed upon school districts.

(4) Each public charter school is otherwise exempt from rules governing school districts which have been promulgated by the state board of education, with the exception of state rules relating to:

(a) Waiver of teacher certification as necessitated by the provisions of section 33-5205(3)(g), Idaho Code;

(b) Accreditation of the school as necessitated by the provisions of section 33-5205(3)(e), Idaho Code;

(c) Qualifications of a student for attendance at an alternative school as necessitated by the provisions of section 33-5208(3), Idaho Code;

(d) The requirement that all employees of the school undergo a criminal history check as required by section 33-130, Idaho Code; and

(e) All rules which specifically pertain to public charter schools promulgated by the state board of education. [I.C., § 33-5210, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 6, p. 623; am. 2000, ch. 278, § 1, p. 901; am. 2002, ch. 110, § 1, p. 309; am. 2004, ch. 371, § 10, p. 1099; am. 2005, ch. 376, § 10, p. 1201.]

STATUTORY NOTES

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect

the validity of the remaining portions of this act."

Effective Dates. — Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5211. Assistance with petitions — Information. — (1) The state department of education shall provide technical assistance to persons or groups preparing or revising charter petitions.

(2) Upon request, the state department of education shall provide the following information concerning a public charter school whose petition has been approved:

(a) The public charter school's petition.

(b) The annual audit performed at the public charter school pursuant to the public charter school petition.

(c) Any written report by the state board of education to the legislature reviewing the educational effectiveness of public charter schools. [I.C., § 33-5211, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 188, § 1, p. 651; am. 2004, ch. 371, § 11, p. 1099.]

STATUTORY NOTES

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5212. Review. — The state board of education shall review the educational effectiveness of charter schools under the provisions of this chapter and shall report to the legislature not later than July 1, 2004. [I.C., § 33-5212, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 188, § 2, p. 651.]

33-5213. Public charter school commission. — (1) There is hereby created an independent public charter school commission, referred to hereinafter as the commission, to be located in the office of the state board of education, pursuant to section 33-105, Idaho Code. It shall be the responsibility and duty of the executive director of the state board of education acting at the direction of the commission to administer and enforce the provisions of this chapter, and the director or his designee, shall serve as secretary to the commission.

(2) The public charter school commission shall adopt rules, subject to law, regarding the governance and administration of the commission.

(3) The commission shall be composed of seven (7) members:

(a) Three (3) members shall be current or former members of boards of directors of Idaho public charter schools, and shall be appointed by the

governor, subject to the advice and consent of the senate; provided however, that no current board member of a public charter school authorized by the commission shall be eligible for appointment;

(b) Three (3) members shall be current or former trustees of an Idaho school district, and shall be appointed by the governor, subject to the advice and consent of the senate; and

(c) One (1) member shall be a member of the public at large not directly associated with the Idaho public education system, and shall be appointed by the governor, subject to the advice and consent of the senate.

For the purpose of establishing staggered terms of office, the initial term of office for three (3) commission members shall be four (4) years and thereafter shall be four (4) years; the initial term of office for two (2) members shall be three (3) years and thereafter shall be four (4) years; and the initial term of office for two (2) members shall be two (2) years and thereafter shall be four (4) years. In making such appointments, the governor shall consider regional balance. Members of the commission shall hold office until the expiration of the term to which the member was appointed and until a successor has been duly appointed, unless sooner removed for cause by the appointing authority. Whenever a vacancy occurs, the appointing authority shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(4) All members of the commission shall be citizens of the United States and residents of the state of Idaho for not less than two (2) years.

(5) The members of the commission shall, at their first regular meeting following the effective date of this act, and every two (2) years thereafter, elect, by a majority vote of the members of the commission, a chairman and a vice-chairman. The chairman shall preside at meetings of the commission, and the vice-chairman shall preside at such meetings in the absence of the chairman. A majority of the members of the commission shall constitute a quorum. The commission shall meet at such times and places as determined to be necessary and convenient, or at the call of the chair.

(6) Each member of the commission not otherwise compensated by public moneys shall be compensated as provided in section 59-509(h), Idaho Code. [I.C., § 33-5213, as added by 2004, ch. 371, § 12, p. 1099.]

STATUTORY NOTES

Compiler's Notes. — Section 13 of S.L. 2004, ch. 371 read: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

33-5214. [Reserved.]

33-5215. Professional-technical regional public charter school.
— (1) A professional-technical regional public charter school is hereby declared to be a public charter school and as such, the provisions of chapter 52, title 33, Idaho Code, shall apply to each professional-technical regional

public charter school in the same manner and to the same extent as the provisions of charter school law apply to other public charter schools, with the exception of certain conditions and applications as specifically provided in this section.

(2) In addition to the approval provisions of this chapter, approval of a professional-technical regional public charter school by an authorized chartering entity shall not be final until the petition has also been reviewed by the division of professional-technical education.

(3) Funding for a professional-technical regional public charter school shall be the same as provided in section 33-5208, Idaho Code, except that:

(a) The salary-based apportionment for a professional-technical regional public charter school shall be the statewide average index for public charter schools. Such salary-based apportionment may be used for payment of contracted services or for direct hire of staff;

(b) The board of directors may contract for the services of certificated and noncertificated personnel, to procure the use of facilities and equipment, and to purchase materials and equipment, which in the judgment of the board of directors is necessary or desirable for the conduct of the business of the professional-technical regional public charter school; and

(c) Transportation support shall be paid to the professional-technical regional public charter school in accordance with the provisions of chapter 15, title 33, Idaho Code.

(4) A professional-technical regional public charter school shall provide assurances in state attendance reports that it has verified attendance reports, which generate ADA with its participating school districts, to make certain that the districts and the charter school do not duplicate enrollment or ADA claims. [I.C., § 33-5215, as added by 2007, ch. 246, § 2, p. 724.]

CHAPTER 53

IDAHO SCHOOL BOND GUARANTY ACT

SECTION.

33-5301. Title.

33-5302. Definitions.

33-5303. State's guarantee — Monitoring of financial solvency contract with bondholders — Guarantee — Limitation as to certain refunded bonds.

33-5304. Program eligibility — Option to forego guaranty.

33-5305. State treasurer to monitor fiscal solvency of school districts — Duties of state treasurer and attorney general.

33-5306. Paying agent to provide notice —

SECTION.

State treasurer to execute transfer to paying agents — Effect of transfer.

33-5307. State financial assistance intercept mechanism — State treasurer duties — Interest and penalty provisions.

33-5308. Backup liquidity arrangements — Issuance of notes.

33-5309. Unlimited sales tax account pledge — State tax commission duties.

33-5310. When credit enhancement program takes effect.

33-5301. Title. — This chapter shall be known as the “Idaho School Bond Guaranty Act.” [I.C., § 33-5301, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

33-5302. Definitions. — (1) “Board” means the board of trustees of a school district, including a specially chartered district, existing now or later under the laws of the state.

(2) “Bond” means any general obligation bond or refunding bond issued after the effective date of this chapter.

(3) “Default avoidance program” means the school bond guaranty program established by this chapter.

(4) “General obligation bond” means any bond, note, warrant, certificate of indebtedness, or other obligation of a board payable in whole or in part from revenues derived from property taxes and that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitation.

(5) “Paying agent” means the corporate paying agent selected by the board for a bond issue who is:

(a) Duly qualified; and

(b) Acceptable to the state treasurer.

(6) “Public school guarantee fund” means the fund described in section 2, article VIII, of the constitution of the state of Idaho and section 33-5309, Idaho Code.

(7) “Refunding bond” means any general obligation bond issued by a board for the purpose of refunding its outstanding general obligation bonds.

(8) “School district” means any school district, including a specially chartered district, existing now or later under the laws of the state. [I.C., § 33-5302, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

33-5303. State’s guarantee — Monitoring of financial solvency contract with bondholders — Guarantee — Limitation as to certain refunded bonds. —

(1)(a) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair, or limit the rights vested by the default avoidance program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(b) Notwithstanding subsection (1)(a) of this section, nothing contained in this chapter precludes an alteration, impairment, or limitation if adequate provision is made by law for the protection of the holders of the bonds.

(c) Each school district may refer to this pledge and undertaking by the state in its bonds.

(2)(a) The sales tax of the state is pledged to guarantee full and timely payment of the principal of, either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment, and interest on, refunding bonds issued on and after March 1, 1999, for voter approved bonds which were voted on by the electorate prior to March 1, 1999, and voter approved bonds which were voted on by the electorate on and after March 1, 1999, as such payments shall become due, except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under provisions of this chapter.

(3)(a) Any bond guaranteed under this chapter that is refunded and considered paid for, no longer has the benefit of the guaranty provided by this chapter from and after the date on which that bond was considered to be paid.

(b) Any refunding bond issued by a board that is itself secured by government obligations until the proceeds are applied to pay refunded bonds is not guaranteed under the provisions of this chapter, until the refunding bonds cease to be secured by government obligations.

(4) Only validly issued bonds issued after the effective date of this chapter are guaranteed under this chapter.

(5) On and after July 1, 2007, state school bond guarantees issued by the state of Idaho shall not exceed twenty million dollars (\$20,000,000) in the aggregate per school district. Notwithstanding this maximum limit, bond guarantees exceeding the twenty million dollar (\$20,000,000) limit prior to July 1, 2007, shall remain in effect. In the event school districts consolidate, the maximum state bond guarantee of the newly consolidated school district shall be the sum of the maximum limit of each school district participating in the consolidation. This new maximum limit shall also apply to bonds issued by the consolidated district after July 1, 2007. [I.C., § 33-5303, as added by 1999, ch. 328, § 1, p. 840; am. 2002, ch. 305, § 1, p. 869; am. 2007, ch. 89, § 2, p. 243.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 89, added subsection (5).

Effective Dates. — Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 2 of S.L. 2002, ch. 305 declared an emergency. Approved March 26, 2002.

JUDICIAL DECISIONS**Constitutionality.**

The pledge of state sales tax monies pursuant to subsection (2) was not in conflict with the proscription against giving the state's credit as found in Const. Art. VIII, § 2, because there is nothing in Art. VIII, § 2 pro-

hibiting a pledge of state sales tax proceeds in an amount exceeding state aid in support of educational programs. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

33-5304. Program eligibility — Option to forego guaranty. —

- (1)(a) Any school district through its board of trustees or its superintendent may request that the state treasurer issue a certificate evidencing eligibility for the state's guaranty of its eligible bonds under this chapter.
- (b) After reviewing the request, if the state treasurer determines that the board is eligible, the state treasurer shall promptly issue the certificate and provide it to the requesting board.
- (c)(i) The school district receiving the certificate and all other persons may rely on the certificate as evidencing eligibility for the guaranty for one (1) year from and after the date of the certificate, without making further inquiry of the state treasurer during the year. The certificate of eligibility shall state that the guarantee is good for the life of the bond. This guarantee shall be printed on all bonds guaranteed pursuant to this chapter or shall be an addendum attached to all bonds guaranteed pursuant to this chapter.
- (ii) The certificate of eligibility is valid for the life of the bond, even if the state treasurer later determines that the school district is ineligible. If the state treasurer later determines that the school district is ineligible, the treasurer shall publish a twenty (20) days' notice as provided in section 60-109, Idaho Code, in a newspaper of general circulation in the county of the school district and in a newspaper in the county where the state capitol is located regarding the ineligibility. Additionally, the treasurer shall notify the underwriter of the bonds and the bond counsel of its office's finding. The underwriter and the bond counsel shall make a good faith effort to notify holders of the bonds of the treasurer's determination.
- (2) Any board that chooses to forego the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.
- (3) Any district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter may not issue any additional bonds guaranteed by this act until:
- (a) All payment obligations of the district to the state under the default avoidance program are satisfied; and
- (b) The state treasurer certifies in writing, to be kept on file by the state treasurer, that the school district is fiscally solvent.
- (4) Bonds not guaranteed by this chapter are not included in the definition of "bond" in section 33-5302, Idaho Code, as used generally in this chapter, are not subject to the requirements of and do not receive the benefits of this chapter. [I.C., § 33-5304, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Compiler's Notes. — The words "this act", as used in the introductory paragraph in subsection (3), refer to S.L. 1979, ch. 328, which is codified as §§ 33-5301 to 33-5310.

Effective Dates. — Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

33-5305. State treasurer to monitor fiscal solvency of school districts — Duties of state treasurer and attorney general. — (1) The state treasurer shall:

- (a) Monitor the financial affairs and condition of each school district in the state to evaluate each school district's financial solvency;
- (b) At least annually, report his conclusions to the governor, the legislature and the state superintendent of public instruction; and
- (c) Report immediately to the governor and superintendent of public instruction any circumstances suggesting that a school district will be unable to timely meet its debt service obligations and recommend a course of remedial action.

(2)(a) After examining the report of the school district, the state treasurer shall determine whether or not the financial affairs and condition of a board are such that it would be imprudent for the state to guarantee the bonds of that school district.

(b) If the state treasurer determines that the state should not guarantee the bonds of that board, the state treasurer shall:

- (i) Prepare a determination of ineligibility;
- (ii) Keep it on file in the office of the state treasurer; and
- (iii) Make the necessary advertisements and notifications as provided in section 33-5304, Idaho Code.

(c) The state treasurer may remove a district from the status of ineligibility when a subsequent report of the school district or other information made available to the state treasurer evidences that it is no longer imprudent for the state to guarantee the bonds of that board.

(3) Nothing in this section affects the state's guaranty of bonds of a board issued:

- (a) Before determination of ineligibility;
- (b) After the eligibility of the board is restored; or
- (c) Under a certificate of eligibility issued under this chapter. [I.C., § 33-5305, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

ch. 328 declared an emergency. Approved March 24, 1999.

Effective Dates. — Section 4 of S.L. 1999,

33-5306. Paying agent to provide notice — State treasurer to execute transfer to paying agents — Effect of transfer. —

(1)(a) The superintendent of each school district with outstanding, unpaid bonds shall transfer moneys sufficient for the scheduled debt service

payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds.

(b) The paying agent may, if instructed to do so by the superintendent, invest the moneys at the risk and for the benefit of the board until the payment date.

(c) A superintendent who is unable to transfer the scheduled debt service payment to the paying agent fifteen (15) days before the payment date shall immediately notify the paying agent and the state treasurer by:

- (i) Telephone;
- (ii) A writing sent by facsimile transmission; and
- (iii) A writing sent by first-class United States mail.

(2) If sufficient funds are not transferred to the paying agent as required by subsection (1) of this section, the paying agent shall notify the state treasurer of that failure in writing at least ten (10) days before the scheduled debt service payment date by:

- (a) Telephone;
- (b) A writing sent by facsimile transmission; and
- (c) A writing sent by first-class United States mail.

(3)(a) If sufficient moneys to pay the scheduled debt service payment have not been transferred to the paying agent, the state treasurer shall, on or before the scheduled payment date, transfer sufficient moneys to the paying agent to make the scheduled debt service payment.

(b) The payment by the treasurer:

- (i) Discharges the obligation of the issuing board to its bondholders for the payment; and
- (ii) Transfers the rights represented by the general obligation of the board from the bondholders to the state.

(c) The board shall pay the transferred obligation to the state as provided in this chapter. [I.C., § 33-5306, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

33-5307. State financial assistance intercept mechanism — State treasurer duties — Interest and penalty provisions. —

(1)(a) If one (1) or more payments on bonds are made by the state treasurer as provided in this chapter, the state treasurer shall:

- (i) Immediately intercept any payments from the public school permanent endowment fund or from any other source of operating moneys provided by the state to the board that issued the bonds that would otherwise be paid to the board by the state; and
- (ii) Apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the board to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the district or to any person or entity to replace any moneys intercepted under the authority of this subsection.

(2) The school district that issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus one percent (1%); and

(c) Pay all penalties required by this chapter.

(3)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the district on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the board to make payment on its bonds in a timely manner, impose on the board a penalty of not more than five percent (5%) of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(4)(a)(i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one (1) year from the state's payment of a district's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the district and its board to compel it to:

1. Levy and provide tax revenues to pay debt service on its bonds when due; and

2. Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a school district.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The school district shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.

(5)(a) Except as provided in paragraph (c) of this subsection, any district whose operating funds were intercepted under this section may replace those funds from other district moneys or from property taxes, subject to the limitations provided in this subsection.

(b) A district may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

(i) Taxes originally levied to make the payment but which were not timely received by the district;

(ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

(iii) Moneys transferred from the undistributed reserve, if any, of the district; or

(iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a district may not replace operating funds intercepted by the

state with moneys collected and held to make payments on bonds if that replacement would divert moneys from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon a second time. [I.C., § 33-5307, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Cross References. — Public school permanent endowment fund, art. IX, § 4 and § 33-902.

Effective Dates. — Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

33-5308. Backup liquidity arrangements — Issuance of notes. —

(1)(a) If, at the time the state is required to make a debt service payment under its guaranty on behalf of a school district, sufficient moneys of the state are not on hand and available for that purpose, the state treasurer may:

(i) Seek a loan from the public school guarantee fund sufficient to make the required payment; or

(ii) Issue state notes as provided in subsection (2) of this section.

(b) Nothing in this subsection requires the public school permanent endowment fund to lend moneys to the state treasurer.

(c) Each series of notes issued may not mature later than twelve (12) months from the date the notes are issued, or the end of the fiscal year, whichever is sooner.

(d) Notes issued may be refunded using the procedures set forth in this chapter for the issuance of notes, in an amount not more than the amount necessary to pay principal of an accrued but unpaid interest on any refunded notes plus all costs of issuance, sale and delivery of the refunding notes, rounded up to the nearest natural multiple of five thousand dollars (\$5,000).

(e) Each series of refunding notes may not mature later than twelve (12) months from the date the refunding notes are issued, or the end of the fiscal year, whichever is sooner.

(2)(a) Before issuing or selling any note to other than a state fund or account, the state treasurer shall:

(i) Prepare a written plan of financing; and

(ii) File it with the governor.

(b) The plan of financing shall provide for:

(i) The terms and conditions under which the notes will be issued, sold and delivered;

(ii) The taxes or revenues to be anticipated;

(iii) The maximum amount of notes that may be outstanding at any one (1) time under the plan of financing;

(iv) The sources of payment of the notes;

(v) The rate or rates of interest, if any, on the notes or a method, formula or index under which the interest rate or rates on the notes may be determined during the time the notes are outstanding; and

(vi) All other details relating to the issuance, sale and delivery of the notes.

(c) In identifying the taxes or revenues to be anticipated and the sources of payment of the notes in the financing plan, the state treasurer may include:

- (i) The taxes authorized by this chapter;
- (ii) The intercepted revenues authorized by this chapter;
- (iii) The proceeds of refunding notes; or
- (iv) Any combination of subparagraphs (i), (ii) and (iii) of this paragraph.

(d) The state treasurer may include in the plan of financing the terms and conditions of arrangements entered into by the state treasurer on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing and tender agreements to secure the notes, including payment from any legally available source of fees, charges or other amounts coming due under the agreements entered into by the state treasurer.

(e) When issuing the notes, the state treasurer shall issue an order setting forth the interest, form, manner of execution, payment, manner of sale, prices at, or below face value, and all details of issuance of the notes.

(f) The order and the details set forth in the order shall conform with any applicable plan of financing and with this chapter.

(g)(i) Each note shall recite that it is a valid obligation of the state and that the full faith, credit, and resources of the state are pledged for the payment of the principal of and interest on the note from the taxes or revenues identified in accordance with its terms and the constitution and laws of Idaho.

(ii) These general obligation notes do not constitute debt of the state for the purposes of the debt limitation of section 1, article VIII, of the constitution of the state of Idaho.

(h) Immediately upon the completion of any sale of notes, the state treasurer shall:

- (i) Make a verified return of the sale to the state controller, specifying the amount of notes sold, the persons to whom the notes were sold, and the price, terms and conditions of the sale; and
- (ii) Credit the proceeds of the sale, other than accrued interest and amounts required to pay costs of issuance of the notes, to the general fund to be applied to the purpose for which the notes were issued. [I.C., § 33-5308, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Cross References. — Public school guarantee fund, § 33-5309.

Public school permanent endowment fund, art. IX, § 4 and § 33-902.

Effective Dates. — Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

JUDICIAL DECISIONS

Constitutionality.

Where the 1998 constitutional amendments to amend Const., Art. IX, §§ 3 and 11

were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single

ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory enactments or

amendments by S.L. 1999, ch. 328 were upheld. State Endowment Fund Inv. Bd. v. Crane, 135 Idaho 667, 23 P.3d 129 (2001).

33-5309. Unlimited sales tax account pledge — State tax commission duties. —

(1)(a) In each year after the issuance of general obligation notes under this chapter and until all outstanding notes are retired, there shall be transferred from the state sales tax account pursuant to section 63-3638, Idaho Code, an amount sufficient to pay all principal of and interest on the general obligation notes as they become due.

(b) If moneys expected to be intercepted under this chapter are expected to be insufficient to reimburse the state for its payments of school districts' scheduled debt service payments or it is necessary for the state treasurer to borrow as provided in this chapter and amounts to be intercepted under this chapter are expected to be insufficient to timely pay the general obligation notes issued or other borrowing undertaken under that section, the state treasurer shall certify to and give notice to the state tax commission of the amount of the deficiency.

(c) After receipt of that certified notice from the state treasurer, the state tax commission shall:

(i) Immediately fix the amount necessary and in the amount of the deficiency stated in the notice; and

(ii) Cause moneys to be transferred from the state sales tax account pursuant to section 63-3638, Idaho Code, and deposited in the public school guarantee fund which is hereby statutorily created.

(2) To the extent that other legally available revenues and funds of the state are sufficient to meet the certified deficiency, the moneys transferred from the sales tax account in section 63-3638, Idaho Code, is abated. [I.C., § 33-5309, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Cross References. — State tax commission, Art. VII, § 12, and § 63-101.

ch. 328 declared an emergency. Approved March 24, 1999.

Effective Dates. — Section 4 of S.L. 1999,

33-5310. When credit enhancement program takes effect. — The credit enhancement program for school district bonds and loans pursuant thereto as provided in section 57-728, Idaho Code, shall take effect if the state treasurer certifies that moneys from the sales tax account or from the provisions of this chapter are insufficient to pay the principal of and interest on the general obligation notes issued pursuant to section 33-5308, Idaho Code, and due and payable, and so notifies the endowment fund investment board in writing. [I.C., § 33-5310, as added by 1999, ch. 328, § 1, p. 840.]

STATUTORY NOTES

Cross References. — Endowment fund investment board, § 57-718.

ch. 328 declared an emergency. Approved March 24, 1999.

Effective Dates. — Section 4 of S.L. 1999,

JUDICIAL DECISIONS

Constitutionality.

Where the 1998 constitutional amendments to amend Const., Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single

ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory enactments or amendments by S.L. 1999, ch. 328 were upheld. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

CHAPTER 54

COLLEGE SAVINGS PROGRAM

SECTION.

33-5401. Definitions.

33-5402. State college savings program board — College savings program — Powers and duties.

33-5403. Use of contractor as account depository and manager.

33-5404. Program requirements.

SECTION.

33-5405. Taxation to beneficiary.

33-5406. Scholarships and financial aid provisions.

33-5407. Limitations of chapter.

33-5408. Annual report.

33-5409. College savings fund.

33-5410. Unclaimed accounts.

33-5401. Definitions. — As used in this chapter, the following terms have the following meanings unless the context clearly denotes otherwise:

(1) “Account” means an individual trust account or savings account established as prescribed in this chapter.

(2) “Account owner” means the person or state or local government organization designated in the agreement governing the account as having the right to withdraw moneys from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) “Board” means the state college savings program board created in section 33-5402, Idaho Code.

(4) “Designated beneficiary,” except as provided in section 33-5404, Idaho Code, means, with respect to an account, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 33-5404, Idaho Code, the replacement beneficiary.

(5) “Eligible educational institution” shall have the meaning provided in 26 U.S.C. section 529.

(6) “Financial institution” means any state bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm or other similar entity that is authorized to do business in this state.

(7) “Member of the family” shall have the meaning as provided in 26 U.S.C. section 529.

(8) “Nonqualified withdrawal” means an account withdrawal that is not one (1) of the following:

(a) A qualified withdrawal;

(b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account;

- (c) A withdrawal that is made on account of a scholarship as defined in 26 U.S.C. section 117 or an educational allowance as defined in 26 U.S.C. section 25A(g)(2);
- (d) A rollover or change of the designated beneficiary.
- (9) "Person" means an individual, a trust, an estate, a partnership, an association, a foundation, a guardianship, a corporation, or a custodian under the Idaho uniform transfers to minors act.
- (10) "Program" means the college savings program established under this chapter.
- (11) "Qualified higher education expenses" shall have the meaning provided in 26 U.S.C. section 529(e)(3).
- (12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this chapter. [I.C., § 33-5401, as added by 2000, ch. 213, § 1, p. 573; am. 2002, ch. 50, § 1, p. 113; am. 2003, ch. 5, § 1, p. 9; am. 2008, ch. 275, § 1, p. 783.]

STATUTORY NOTES

Cross References. — Uniform transfers to minors act, § 68-801 et seq.

Amendments. — The 2008 amendment, by ch. 275, in subsection (2), inserted "or state or local government organization"; in subsection (4), twice substituted "individual" for "person"; added present subsections (5) and (9) and redesignated the existing subsections accordingly; and deleted former subsection

(6), which was the definition for "Higher education institution."

Effective Dates. — Section 3 of S.L. 2000, ch. 213 declared an emergency retroactively to January 1, 2000 and approved April 12, 2000.

Section 3 of S.L. 2002, ch. 50 declared an emergency retroactively to January 1, 2002. Approved February 27, 2002.

33-5402. State college savings program board — College savings program — Powers and duties. — There is hereby created the state college savings program board. The board shall consist of the state treasurer or his designee who shall serve as chair, the governor or designee, the state controller or designee, the attorney general or designee, the superintendent of public instruction or designee, and the secretary of state or designee. A quorum shall be necessary to transact business. Members of the board shall be compensated by their appointing entity. The state college savings program board shall:

- (1) Develop and implement the program in a manner consistent with this chapter through the adoption of rules, guidelines and procedures;
- (2) Retain professional services, if necessary, including accountants, auditors, consultants and other experts;
- (3) Seek rulings and other guidance from the United States department of the treasury, the internal revenue service and the state tax commission relating to the program;
- (4) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended;
- (5) Interpret, in rules, policies, guidelines and procedures, the provisions of this chapter broadly in light of its purpose and objectives;

(6) Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;

(7) Select the financial institution or institutions to act as the depository and manager of the program in accordance with this chapter;

(8) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of the program;

(9) Establish, in its discretion, a trust or other method of segregating the funds of participants in the program from the general funds of the state, the funds of the board and the funds of the members of the board;

(10) Administer the program and any trust established by the board as instrumentalities of the state under section 529 of the Internal Revenue Code of 1986, as amended, and the federal securities law, including the securities act of 1933, as amended, the trust indenture act of 1939, as amended, and the investment company act of 1940, as amended. [I.C., § 33-5402, as added by 2000, ch. 213, § 1, p. 573; am. 2008, ch. 275, § 2, p. 784.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

State tax commission, Art. VII, § 12 and § 63-101.

Amendments. — The 2008 amendment,

by ch. 275, added subsections (8) through (10).

Federal References. — Section 529 of the Internal Revenue Code, referred to in subsection (4), is compiled as 26 U.S.C.S. § 529.

33-5403. Use of contractor as account depository and manager. —

(1) The board shall implement the program through the use of one (1) or more financial institutions to act as the depositories and managers. Under the program, persons may establish accounts through the program at the depository.

(2) The board shall solicit proposals from financial institutions to act as the depositories and managers of the program. Financial institutions that submit proposals must describe the financial instruments that will be held in accounts.

(3) The board shall select as program depositories and managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and this state, of the following factors:

(a) Financial stability and integrity;

(b) The safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments;

(c) The ability of the investment instruments to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) The ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) The financial institution's plan for promoting the program and the investment it is willing to make to promote the program;

(f) The fees, if any, proposed to be charged to persons for maintaining accounts;

(g) The minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution to accept contributions through payroll deduction plans and other deposit plans;

(h) Any other benefits to this state or its residents included in the proposal, including an account opening fee payable to the board by the account owner and an additional fee from the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5) of this section, contracts with financial institutions, to serve as program managers and depositories.

(5) The board may select more than one (1) financial institution and investment for the program if both of the following conditions exist:

(a) The United States internal revenue service has provided guidance that giving a contributor a choice of two (2) investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code;

(b) The board concludes that the choice of instrument vehicles is in the best interest of college savers and will not interfere with the promotion of the program.

(6) A program manager shall:

(a) Take all action required to keep the program in compliance with the requirements of this chapter and all action not contrary to this chapter or its contract to manage the program so that it is treated as a qualified state tuition plan under section 529 of the Internal Revenue Code;

(b) Keep adequate records of each account, keep each account segregated from each other account and provide the board with the information necessary to prepare statements required by section 33-5404, Idaho Code, or file these statements on behalf of the board;

(c) Compile and total information contained in statements required to be prepared under section 33-5404, Idaho Code, and provide these compilations to the board;

(d) If there is more than one (1) program manager, provide the board with this information to assist the board to determine compliance with section 33-5404, Idaho Code;

(e) Provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract;

(f) Hold all accounts in trust for the benefit of this state and the account owner.

(7) Any contract executed between the board and a financial institution pursuant to this section shall be for a term not to exceed ten (10) years.

(8) If a contract executed between the board and a financial institution pursuant to this section is not renewed, all of the following conditions apply at the end of the term of the nonrenewed contract:

(a) Accounts previously established and held in investment instruments at the financial institution shall not be terminated;

- (b) Additional contributions may be made to the accounts;
- (c) No new accounts may be placed with that financial institution.
- (9) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the board. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar to the original investments as is possible. [I.C., § 33-5403, as added by 2000, ch. 213, § 1, p. 573; am. 2007, ch. 170, § 1, p. 501.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 170, substituted “ten (10) years” for “five (5) years” in subsection (7).

Internal Revenue Code, referred to in paragraph (5)(a) and paragraph (6)(a), is compiled as 26 U.S.C.S. § 529.

Federal References. — Section 529 of the

33-5404. Program requirements. — (1) The program shall be operated through the use of accounts. An account may be opened by any person who desires to save to pay the qualified higher education expenses of a person. Minors may open an account which cannot be disaffirmed pursuant to section 32-103, Idaho Code. A person may open an account by satisfying each of the following requirements:

- (a) Completing an application in the form prescribed by the board. The application shall include the following information:
 - (i) The name, address and social security number or employer identification number of the contributor;
 - (ii) The name, address and social security number of the account owner if the account owner is not the contributor;
 - (iii) The name, address and social security number of the designated beneficiary;
 - (iv) The certification relating to no excess contributions required by subsection (13) of this section;
 - (v) Any other information that the board may require;
 - (b) Paying the one-time application fee established by the board;
 - (c) Making the minimum contribution required by the board or by opening an account;
 - (d) Designating the type of account to be opened if more than one (1) type of account is offered.
- (2) Any person may make contributions to an account after the account is opened.
- (3) Contributions to accounts may be made only in cash.
 - (4) Account owners may withdraw all or part of the balance from an account on sixty (60) days' notice, or a shorter period as may be authorized by the board, under rules prescribed by the board.
 - (5) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(6) On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(7) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following provisions of this section relating to excess contributions or to investment choice.

(8) Each account shall be maintained separately from each other account under the program.

(9) Separate records and accounting shall be maintained for each account for each designated beneficiary.

(10) No contributor to, account owner of or designated beneficiary of any account may direct the investment of any contributions to an account or the earnings from the account.

(11) If the board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the board shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are current contractors would not cause a plan to cease to be a qualified tuition program.

(12) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(13) The board shall adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules shall address the following:

(a) Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(b) The establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(c) The board shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified tuition programs, as defined in section 529 of the Internal Revenue Code, of which that person is the designated beneficiary does not exceed the lesser of:

(i) A maximum college savings amount established by the board from time to time;

(ii) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(d) Requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.

(14) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be

reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(15) The financial institution shall provide statements to each account owner at least once each year within thirty-one (31) days after the twelve (12) month period to which they relate. The statement shall identify the contributions made during a preceding twelve (12) month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the board requires be reported to the account owner.

(16) Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

(17) A state or local government or organization described in section 501(c)(3) of the Internal Revenue Code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

(18) In the case of any account described in subsection (17) of this section, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

(19) Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the board are confidential, are not public records and shall not be released by the board. [I.C., § 33-5404, as added by 2000, ch. 213, § 1, p. 573; am. 2002, ch. 50, § 2, p. 113; am. 2008, ch. 275, § 3, p. 784.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 275, in the introductory paragraph in subsection (1), added the second sentence; and deleted the last two sentences in subsection (4), which read: "These rules shall include provisions that will generally enable the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may, but need not, require one (1) or more of the following;" and paragraphs (4)(a) and (4)(b), which read: "(a) Account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified

higher education expenses or other supporting material" and (b) Qualified withdrawals from an account shall be made only by a check payable as designated by the account owner".

Federal References. — Section 529 of the Internal Revenue Code, referred to in paragraph (13)(c), is compiled as 26 U.S.C.S. § 529.

Section 501(c)(3) of the Internal Revenue Code, referred to in subsection (17), is compiled as 26 U.S.C.S. § 501(c)(3).

Effective Dates. — Section 3 of S.L. 2002, ch. 50 declared an emergency retroactively to January 1, 2002. Approved February 27, 2002.

33-5405. Taxation to beneficiary. — The designated beneficiary, as defined in section 529(e)(1) of the Internal Revenue Code, from an individual trust account or savings account established under this chapter is liable for taxes that may accrue under chapter 30, title 63, Idaho Code, when a qualified withdrawal is made by the designated beneficiary. [I.C., § 33-5405, as added by 2000, ch. 213, § 1, p. 573.]

STATUTORY NOTES

Federal References. — Section 529(e)(1) of the Internal Revenue Code is compiled as 26 U.S.C.S. § 529(e)(1).

33-5406. Scholarships and financial aid provisions. — (1) Any student loan program, student grant program or other financial assistance program established or administered by this state shall treat the balance in an account of which the student is a designated beneficiary as if it were an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an asset of the student for determining a student's or parent's income, assets or financial need.

(2) Subsection (1) of this section applies to any financial assistance program administered by a state-supported college or university.

(3) Subsections (1) and (2) of this section do not apply if any of the following conditions exist:

(a) Federal law requires all or a portion of the amount in an account to be taken into account in a different manner;

(b) Federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner;

(c) A specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account. [I.C., § 33-5406, as added by 2000, ch. 213, § 1, p. 573.]

33-5407. Limitations of chapter. — (1) Nothing in this chapter shall be construed to:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) Guarantee that a designated beneficiary will be admitted to an eligible education institution or be allowed to continue enrollment at or graduate from an eligible education institution located in this state after admission;

(c) Establish state residency for a person merely because the person is a designated beneficiary;

(d) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) Nothing in this chapter establishes any obligation of this state or any agency or instrumentality of this state to guarantee for the benefit of any account owner, contributor to an account or designated beneficiary any of the following:

(a) The return of any amounts contributed to an account;

(b) The rate of interest or other return on any account;

(c) The payment of interest or other return on any account;

(d) Tuition rates or the cost of related higher education expenditures.

(3) Under policies adopted by the board, every contract, application, deposit slip or other similar document that may be used in connection with

a contribution to an account shall clearly indicate that the account is not insured by this state and neither the principal deposited nor the investment return is guaranteed by this state. [I.C., § 33-5407, as added by 2000, ch. 213, § 1, p. 573; am. 2008, ch. 275, § 4, p. 787.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 275, in subsection (1)(b), twice substituted “eligible education” for “higher education”; and in subsection (3), substituted “policies” for “rules.”

33-5408. Annual report. — The board shall submit an annual report to the speaker of the house of representatives and the president pro tempore of the senate by February 1 that summarizes the board’s findings and recommendations concerning the program established by this chapter. [I.C., § 33-5408, as added by 2000, ch. 213, § 1, p. 573.]

33-5409. College savings fund. — (1) There is hereby created in the state treasury the “College Savings Fund” to which shall be credited:

- (a) Administrative fees and service charges in connection with any agreement, contract or transaction related to the college savings program;
- (b) Fees and charges collected to cover costs associated with the powers and duties of the state college savings board as required in section 33-5402, Idaho Code;
- (c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and
- (d) All other moneys as may be provided by law.

(2) Moneys in the fund shall be continuously appropriated to the treasurer of the state of Idaho, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used to effect the purposes of this chapter, pursuant to the provisions as prescribed herein; provided however, the office of the state treasurer is authorized to retain a portion of the moneys not to exceed one-half of one percent (0.5%) of the fund’s annual revenues to defray costs associated with the implementation, administration and oversight of the college savings program. [I.C., § 33-5409, as added by 2007, ch. 225, § 1, p. 678.]

33-5410. Unclaimed accounts. — Unclaimed accounts shall be subject to the provisions of section 14-506, Idaho Code. The date upon which the account owner is deemed to have last communicated that the owner is currently aware of his interest in the account shall not occur prior to the eighteenth birthday of the designated beneficiary. [I.C., § 33-5410, as added by 2008, ch. 275, § 5, p. 787.]

CHAPTER 55

IDAHO DIGITAL LEARNING ACADEMY

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| SECTION. | SECTION. |
| 33-5501. Short title. | 33-5505. Definitions. |
| 33-5502. Creation — Legislative findings — Goal. | 33-5506. Courses — Development — Brokered — Credit — Accreditation. |
| 33-5503. Academy board of directors. | 33-5507. Registration — Accountability. |
| 33-5504. Duties of the academy board of directors. | 33-5508. Funding. |
| 33-5504A. Governmental entity — Liability — Insurance. | 33-5509. Digital learning academy a state department for purposes of risk management. |
| 33-5504B. Expenditures — Budget. | |

33-5501. Short title. — This chapter shall be known and may be cited as the “Idaho Digital Learning Academy Act of 2002.” [I.C., § 33-5501, as added by 2002, ch. 105, § 1, p. 284.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

33-5502. Creation — Legislative findings — Goal. — (1) There is hereby created the Idaho digital learning academy, a public school-choice learning environment which joins the best technology with the best instructional practices. The Idaho digital learning academy as provided for in this chapter, is not a single department of state government unto itself, nor is it a part of any of the twenty (20) departments of state government authorized by section 20, article IV, of the constitution of the state of Idaho, or of the departments prescribed in section 67-2402, Idaho Code. It is legislative intent that the Idaho digital learning academy operate and be recognized not as a state agency or department, but as a governmental entity whose creation has been authorized by the state, much in the manner as other single purpose districts.

(2) The legislature finds that it is in the best public interest to create the Idaho digital learning academy based on findings that indicate:

- (a) Technology continues to impact all facets of life, including the education of students of school age and adult learners;
- (b) Systems for delivery of education are as diverse as the learners;
- (c) Public school systems are seeking high quality educational choices within the public system, and are aligning curriculum and assessment with state achievement standards; and
- (d) The development of a comprehensive digital learning environment is cost prohibitive for individual school districts.

(3) The goal of the digital learning academy is to provide choice, accessibility, flexibility, quality and equity in curricular offerings for students in this state. [I.C., § 33-5502, as added by 2002, ch. 105, § 1, p. 284; am. 2005, ch. 132, § 1, p. 420; am. 2008, ch. 119, § 1, p. 333.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 119, in subsection (1), in the first sentence, deleted “within the state department of education” following “created” and inserted “public,” and added the last two

sentences; and in subsection (3), deleted “secondary” preceding “students.”

Effective Dates. — Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

33-5503. Academy board of directors. — (1) There is hereby created an academy board of directors which shall be responsible for the development and oversight of the Idaho digital learning academy.

(2) The academy board of directors shall be comprised of eight (8) voting members and one (1) nonvoting member as follows:

(a) Three (3) members shall be superintendents, each elected to a three (3) year term and each representing two (2) educational classification regions as established by the state board of education. One (1) superintendent shall be elected from among the superintendents in regions one and two on a rotating term basis between the two (2) regions; one (1) superintendent shall be elected from among the superintendents in regions three and four on a rotating term basis between the two (2) regions; and one (1) superintendent shall be elected from among the superintendents in regions five and six on a rotating term basis between the two (2) regions;

(b) Two (2) members shall be high school principals, each elected to a three (3) year term by the governing body of the Idaho association of secondary school administrators;

(c) Two (2) members shall be citizens at-large who are not professional educators, appointed by the members of the academy board, each to a term of three (3) years; and

(d) The state superintendent of public instruction shall be a voting member and shall serve concurrently with the term of office to which the state superintendent is elected;

(e) One (1) member shall be an ex officio, nonvoting member appointed by the academy board of directors to serve as secretary to the academy board.

(3) For purposes of establishing staggered terms of office, the initial term of office for the superintendent position representing educational classification regions one and two shall be one (1) year, and thereafter shall be three (3) years. The initial term of office for the superintendent position representing educational classification regions three and four shall be two (2) years, and thereafter shall be three (3) years. The superintendent position representing educational classification regions five and six shall be three (3) years. The initial term of office for one (1) high school principal position shall be one (1) year and thereafter shall be three (3) years, and the initial term of office for the other high school principal position shall be two (2) years and thereafter shall be three (3) years. The initial term of office for one (1) member at-large shall be one (1) year and thereafter shall be three (3) years, and the term of office for the other member at-large shall be three (3) years.

(4) No voting member shall serve for more than two (2) consecutive full terms. Members of the board who are appointed to fill vacancies which occur

prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(5) The board shall meet in person at least three (3) times annually; none of these three (3) meetings shall be conducted by telephone or video conferencing. [I.C., § 33-5503, as added by 2002, ch. 105, § 1, p. 284; am. 2008, ch. 119, § 2, p. 333.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Amendments. — The 2008 amendment, by ch. 119, in subsection (2), substituted "eight (8) voting members and one (1) nonvoting member" for "seven (7) voting members and two (2) nonvoting members"; added paragraph (2)(d); and redesignated former paragraph (2)(d) as paragraph (2)(e), and rewrote the subsection, which formerly read: "Two (2)

members shall be ex officio, nonvoting members: (i) the state superintendent of public instruction who shall serve concurrently with the term of office to which the state superintendent is elected, and (ii) a member appointed by the academy board of directors to serve as secretary to the academy board."

Effective Dates. — Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

33-5504. Duties of the academy board of directors. — The board shall be responsible for ensuring that academy procedures and courses are in compliance with the rules of the state board of education and applicable statutes of the state of Idaho. In addition, the board shall:

(1) Recommend policies to be established by rule of the state board for effecting the purposes of this chapter.

(2) Employ or contract with staff as necessary and purchase such supplies and equipment as are necessary to implement the provisions of this chapter, which purchases shall be exempt from the purchasing laws in chapter 57, title 67, Idaho Code.

(3) To enter into contracts with any other governmental or public agency whereby the board agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the costs of rendering such service.

(4) To accept, receive and utilize any gifts, grants or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this chapter.

(5) Employ or contract with necessary faculty and teaching staff who are fully certificated Idaho teachers or administrators, to design and deliver planned curriculum content. The academy shall be exempt from the provisions of sections 33-513, 33-514, 33-514A, 33-515 and 33-515A, Idaho Code, and shall be exempt from chapter 53, title 67, Idaho Code. All teaching and educational staff of the academy shall be exempt, at will employees. The number of such staff shall largely be dictated by the number of courses under development, the number of courses offered, and the number of students participating in academy programs.

(6) Obtain housing where actual operations of the academy are conducted by academy staff.

(7) Contract with a service provider for delivery of academy courses online which shall be accessible twenty-four (24) hours a day, seven (7) days a week.

(8) Ensure that the academy is accredited as established by rule of the state board of education.

(9) Develop policy for earning credit in courses based on mastery of the subject, demonstrated competency, and meeting the standards set for each course.

(10) Provide for articulating the content of certain high school courses with college and university courses in order to award both high school and undergraduate college credit.

(11) Develop policies and practices which provide strict application of time limits for completion of courses.

(12) Develop policies and practices on accountability, both by the student and the teacher, and in accordance with the provisions of section 33-5507, Idaho Code.

(13) Manage the moneys disbursed to the academy board from the superintendent.

(14) Set fees charged to school districts for student participation; fees charged for summer school; and fees charged to students and adults for professional development offerings.

(15) Contract with a certified public accounting firm to conduct an annual audit of the Idaho digital learning academy. [I.C., § 33-5504, as added by 2002, ch. 105, § 1, p. 284; am. 2003, ch. 306, § 1, p. 841; am. 2005, ch. 132, § 2, p. 420; am. 2008, ch. 119, § 3, p. 334.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 119, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates. — Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

33-5504A. Governmental entity — Liability — Insurance. —

(1) The Idaho digital learning academy shall be a governmental entity as provided in section 33-5502, Idaho Code. For the purposes of section 59-1302(15), Idaho Code, the Idaho digital learning academy created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by the Idaho digital learning academy are exempt from payment of the sales and use tax. The Idaho digital learning academy and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

(a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;

(b) Chapter 2, title 59, Idaho Code, on prohibitions against contracts with officers;

(c) Chapter 7, title 59, Idaho Code, on ethics in government;

(d) Chapter 23, title 67, Idaho Code, on open public meetings; and

(e) Chapter 3, title 9, Idaho Code, on disclosure of public records.

(2) The Idaho digital learning academy may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as

employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(3) The Idaho digital learning academy shall secure insurance for liability and property loss.

(4) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho digital learning academy, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection (4). The board of directors of the Idaho digital learning academy may accept and award contracts involving the Idaho digital learning academy to businesses in which the director or a person related to him by blood or marriage within the second degree of consanguinity has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of the Idaho digital learning academy for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho digital learning academy, shall not be deemed to be a contract pertaining to the maintenance or conduct of the Idaho digital learning academy within the meaning of this section; nor shall the payment of compensation by the Idaho digital learning academy board of directors to any bank or trust company for services rendered in the transaction of any banking business with the Idaho digital learning academy board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of the Idaho digital learning academy to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or will require, the payment or delivery of any Idaho digital learning academy funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(5) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho digital learning academy, such director shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined. [I.C., § 33-5504A, as added by 2008, ch. 119, § 4, p. 335.]

33-5504B. Expenditures — Budget. — (1) There is hereby created in the state treasury the Idaho digital learning academy fund. The fund shall consist of appropriations, fees, grants, gifts or moneys from any other source. The state treasurer shall invest all idle moneys in the fund and interest earned on such investments shall be retained by the fund.

(2) On or before the first Monday in July, there will be held at the time and place determined by the Idaho digital learning academy board, a budget meeting and public hearing upon the proposed budget of the Idaho digital

learning academy. Notice of the budget meeting and public hearing shall be posted at least ten (10) full days prior to the date of the meeting in at least one (1) conspicuous place to be determined by the Idaho digital learning academy board of directors. The place, hour and day of the hearing shall be specified in the notice, as well as the place where such budget may be examined prior to the hearing. On or before the first Monday in July a budget for the Idaho digital learning academy shall be agreed upon and approved by the majority of the Idaho digital learning academy board of directors. [I.C., § 33-5504B, as added by 2008, ch. 119, § 5, p. 337.]

33-5505. Definitions. — As used in this chapter:

(1) “Academy board,” also referred to in this chapter as “the board” means the board of directors of the Idaho digital learning academy as such board is created in section 33-5503, Idaho Code.

(2) “Host district” means an Idaho school district where the fiscal operations of the Idaho digital learning academy are housed until January 1, 2009.

(3) “Idaho digital learning academy” means an online educational program organized as a fully accredited school with statewide capabilities for delivering accredited courses to Idaho resident students at no cost to the student unless the student enrolls in additional courses beyond full-time enrollment. Participation in the academy by public school students shall be in compliance with academy and local school district policies. Adult learners and out-of-state students shall pay tuition commensurate with rates established by the state board with the advice of the superintendent, and such funds shall be included in the budget and audit of the academy’s fiscal records.

(4) “State board” means the Idaho state board of education. The board is authorized and directed, with the advice and recommendation of the academy board of directors, to promulgate rules to implement the provisions of this chapter.

(5) “Superintendent” means the Idaho state superintendent of public instruction. [I.C., § 33-5505, as added by 2002, ch. 105, § 1, p. 284; am. 2003, ch. 306, § 2, p. 841; am. 2005, ch. 132, § 3, p. 420; am. 2008, ch. 119, § 6, p. 337.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Amendments. — The 2008 amendment, by ch. 119, in subsection (2), added “until January 1, 2009”; and in the first sentence in subsection (3), deleted “secondary” following

the first occurrence of “accredited” and “in grades seven (7) through twelve (12)” following “resident students.”

Effective Dates. — Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

33-5506. Courses — Development — Brokered — Credit — Accreditation. — Online courses shall reflect state of the art in multimedia-based digital learning. Courses offered shall be of high quality in appearance and presentation, and shall be designed to meet the needs of all students regardless of the student’s level of learning.

(1) All courses developed under the auspices of the academy are the property of the academy. Courses may be developed by qualified Idaho teachers who possess the necessary technical background and instructional expertise. Such persons may also be hired to deliver the course online. Nothing shall prevent the board from providing additional training to teachers in the development and online delivery of courses.

(2) At the discretion of the board with consideration for necessity, convenience and cost effectiveness, brokered courses developed by outside sources may be obtained for use by the academy; however, such courses shall be taught online by Idaho teachers unless special circumstances require a waiver of this requirement.

(3) Grade percentages in courses shall be based on such criteria as mastery of the subject, demonstrated competency, and meeting the standards set for each course.

(4) All courses shall meet criteria established by the state of Idaho as necessary for accreditation of the academy. [I.C., § 33-5506, as added by 2002, ch. 105, § 1, p. 284; am. 2008, ch. 119, § 7, p. 338.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 119, near the end of subsection (2), deleted “determined by the director” following “special circumstances”; in subsection (3), substituted “Grade percentages” for “Credit earned,” and deleted “in contrast to credit earned in a traditional classroom based on

time spent in the classroom” from the end; and in subsection (4), deleted “and the northwest accreditation association” following “state of Idaho.”

Effective Dates. — Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

33-5507. Registration — Accountability. — (1) A student may register with the academy upon recommendation from a traditional school counselor or administrator, or may register directly with the academy if there is no current public school affiliation. However, in order for coursework completed through the academy to be recorded on the student’s transcript, the student shall indicate which school is to receive and record credits earned.

(2) Students who register for courses shall provide the name of a responsible adult who shall be the contact person for the academy in situations which require consultation regarding the student’s conduct and performance. A designated responsible adult for students with a school affiliation may be a teacher, a counselor or a distance learning coordinator. For home schooled students, a parent or guardian may be designated.

(3) Policies of accountability as established by rule of the state board shall address the special conditions which exist in an environment where there is reduced face-to-face contact between student and teacher; where students access courses at any time of day, from any location and at the student’s own pace; where online etiquette and ethics should be clearly understood and required of all participants; and where all students’ participation is monitored by online teachers and academy personnel.

(4) Policies shall be established by rule of the state board for student-related issues including taking exams, proctored or unproctored; ensuring

that the work is being done by the student; and ensuring that ethical conduct and proper etiquette are always observed by all participants. [I.C., § 33-5507, as added by 2002, ch. 105, § 1, p. 284; am. 2005, ch. 132, § 4, p. 420; am. 2008, ch. 119, § 8, p. 338.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 119, deleted “secondary” preceding “school” in the last sentence in subsection (1).

Effective Dates. — Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

33-5508. Funding. — (1) Funding for the infrastructure of the program shall be provided pursuant to section 33-1020, Idaho Code. The superintendent shall disburse the funds to the Idaho digital learning academy board of directors who shall use the moneys to develop courses and maintain operations of the academy.

(2) Additional funding for course offerings through the Idaho digital learning academy shall be added to the Idaho digital learning academy budget by charging fees to the school districts for student participation. These fees shall be established annually by the Idaho digital learning academy board of directors and shall reflect the various types of course offerings available. Fees for summer school and professional development offerings to students and adults shall also be established by the Idaho digital learning academy board of directors. [I.C., § 33-5508, as added by 2002, ch. 105, § 1, p. 284; am. 2003, ch. 306, § 3, p. 841; am. 2007, ch. 353, § 13, p. 1045.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Amendments. — The 2007 amendment, by ch. 353, substituted “pursuant to section 33-1020, Idaho Code” for “from an annual budget request to the legislature from the superintendent of public instruction”.

Legislative Intent. — Section 6 of S.L. 2007, ch. 353 provided “It is legislative intent that the Idaho Safe and Drug-Free School Program shall include the following:

“(1) Districts will develop a policy and plan which will provide a guide for their substance abuse problems.

“(2) Districts will have an advisory board to assist each district in making decisions relating to the programs.

“(3) The districts’ substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(4) Districts shall submit an annual evaluation of their programs to the State Depart-

ment of Education as to the effectiveness of their programs.”

Compiler’s Notes. — Section 14 of S.L. 2007, ch. 353 provided “The Idaho Digital Learning Academy (IDLA), created pursuant to Chapter 55, Title 33, Idaho Code, shall utilize state funds to achieve the following:

“(1) No increase in tuition charged by IDLA to Idaho students.

“(2) Provide remedial coursework for students failing to achieve proficiency in one (1) or more areas of the Idaho Standards Achievement Test.

“(3) Pursuant to State Board of Education rule, IDAPA 08.02.03.106, provide advanced learning opportunities for students.

“(4) Pursuant to State Board of Education rule, IDAPA 08.02.03.106, work with institutions of higher education to provide dual credit coursework.

“The preceding list shall not be construed as excluding other instruction and training that may be provided by the Idaho Digital Learning Academy.”

Effective Dates. — Section 2 of S.L. 2002,

ch. 105 declared an emergency. Approved
March 19, 2002.

33-5509. Digital learning academy a state department for purposes of risk management. — For risk management purposes, the Idaho digital learning academy shall be considered a state department for purposes of risk management pursuant to chapter 57, title 67, Idaho Code, and the department of administration shall treat it as such. [I.C., § 33-5509, as added by 2006, ch. 358, § 1, p. 1091.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2006, ch. 358 declared an emergency. Approved April 7, 2006.

CHAPTER 56

IDAHO OPPORTUNITY SCHOLARSHIP PROGRAM

SECTION.

- 33-5601. Short title.
- 33-5602. Legislative intent.
- 33-5603. Purposes.
- 33-5604. Definitions.
- 33-5605. Academic and financial eligibility.

SECTION.

- 33-5606. Application process.
- 33-5607. Selection process — Amount of awards — Conditions.
- 33-5608. Opportunity scholarship program account.

33-5601. Short title. — This act shall be known and cited as the “Idaho Opportunity Scholarship Act.” [I.C., § 33-5601, as added by 2007, ch. 259, § 1, p. 769.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 2007, Chapter 359 which is codified as §§ 33-5601 to 33-5608.

33-5602. Legislative intent. — It is the intent of the legislature to create a scholarship fund to provide financial resources to Idaho students who are economically disadvantaged to close the gap between the estimated cost of attending an eligible Idaho institution of higher education and the expected student and family contribution toward such educational costs, and to encourage the educational development of such students in eligible Idaho postsecondary educational institutions. [I.C., § 33-5602, as added by 2007, ch. 259, § 1, p. 769.]

33-5603. Purposes. — The purposes of this chapter are to:

- (1) Increase the opportunity for economically disadvantaged Idaho students to attend postsecondary educational institutions within Idaho;
- (2) Reduce the financial burden on eligible students and their families who want to attend eligible postsecondary educational institutions within Idaho;

(3) Recognize the individual benefit of education to students and provide resources to finance their postsecondary education;

(4) Recognize that all Idaho citizens benefit from an educated citizenry, and provide funding to assist with educational costs of participants; and

(5) Increase individual economic vitality and improve the overall quality of life for many of Idaho's citizens. [I.C., § 33-5603, as added by 2007, ch. 259, § 1, p. 769.]

33-5604. Definitions. — As used in this chapter:

(1) "Educational costs" means the dollar amount determined annually by the state board of education as necessary for student tuition, fees, room and board, books and such other expenses reasonably related to attendance at an eligible Idaho postsecondary educational institution.

(2) "Eligible Idaho postsecondary educational institution" means:

(a) A public postsecondary organization governed or supervised by the state board, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of chapter 21, title 33, Idaho Code, or the state board for professional-technical education; or

(b) Any educational organization located in Idaho which is:

(i) Operated privately;

(ii) Classified as not-for-profit under the Idaho Code;

(iii) Under the control of an independent board and not directly controlled or administered by a public or political subdivision; and

(iv) Accredited by an organization recognized by the state board, as provided in section 33-2402, Idaho Code.

(3) "Eligible student" means a student who:

(a) Is an Idaho resident;

(b) Has or will graduate from an accredited high school or equivalent in Idaho as determined by the state board;

(c) Has enrolled or applied as a full-time student to an eligible Idaho postsecondary educational institution; and

(d) Is pursuing an undergraduate degree, certificate or diploma.

(4) "Financial eligibility" means the extent of a person's inability to meet the educational costs associated with attending an eligible Idaho postsecondary educational institution through a model of shared responsibility, taking into account the required and expected contributions of such person's parents, family and personal resources.

(5) "Opportunity scholarship program" means the scholarship program described in this chapter and in the rules established by the state board.

(6) "State board" means the state board of education. [I.C., § 33-5604, as added by 2007, ch. 259, § 1, p. 769.]

STATUTORY NOTES

Cross References. — State board for professional-technical education, § 33-2202.

33-5605. Academic and financial eligibility. — The state board shall promulgate rules by August 1, 2007, to determine academic and financial eligibility consistent with this section [chapter] for the purpose of awarding the Idaho opportunity scholarship. [I.C., § 33-5605, as added by 2007, ch. 259, § 1, p. 769.]

33-5606. Application process. — (1) The state board shall promulgate rules by August 1, 2007, to establish a process and application form for eligible students to apply for an opportunity scholarship.

(2) When applying for an opportunity scholarship an eligible student must:

- (a) Apply or have applied for federal and state student financial assistance available to an eligible student who will attend, or is enrolled in an eligible Idaho postsecondary educational institution;
- (b) Submit to the state board all of the information and documentation required to demonstrate his or her financial eligibility under this chapter, and any other information and documentation the state board may require to determine the applicant's eligibility for an opportunity scholarship under this chapter; and
- (c) Meet any other minimum criteria established by the state board in rule. [I.C., § 33-5606, as added by 2007, ch. 259, § 1, p. 769.]

33-5607. Selection process — Amount of awards — Conditions. —

(1) The state board shall promulgate rules by August 1, 2007, consistent with this section, to determine:

- (a) How eligible students will be selected to receive the Idaho opportunity scholarship; and
- (b) When the scholarship award will occur.

(2) Funds that are available for the opportunity scholarship program shall be used to provide scholarships based on a sharing of responsibility between the scholarship recipient and his or her family, the federal government and the participating eligible Idaho postsecondary educational institution that the recipient attends for covering the educational costs for attendance.

(3) The opportunity scholarship award shall not exceed the actual educational costs at the eligible Idaho postsecondary educational institution that the student attends. The amount of scholarship for attendance on a full-time basis shall not exceed the recognized educational costs, after deducting the following:

- (a) The assigned student/family responsibility, in an amount to be determined by the state board; and
- (b) The amount of any other public or private scholarships or grants which the applicant receives.

(4) Any scholarship awarded under this chapter shall not exceed the equivalent of eight (8) semesters or the equivalent of four (4) academic years. An eligible Idaho postsecondary educational institution participating in this program shall be required to submit statements of continuing student eligibility to the state board, which shall include verification that

the student is still enrolled, attending full time, maintaining satisfactory academic progress and has not exceeded the award eligibility terms.

(5) Grant payments shall correspond to academic terms, semesters, quarters or equivalent time periods at an eligible Idaho postsecondary educational institution. In no instance may the entire amount of a grant be paid to or on behalf of such student in advance.

(6) If an eligible student, scholarship applicant or scholarship recipient becomes ineligible to participate in the opportunity scholarship program under this chapter or the rules established by the state board, then the eligible student may reapply at any time for further consideration under this chapter.

(7) If an eligible student becomes ineligible for a scholarship under this chapter, or if a student discontinues attendance before the end of any semester, quarter, term or equivalent, covered by the grant after receiving payment under this chapter, the eligible Idaho postsecondary educational institution shall remit, up to the amount of any payments made under this grant, any prorated tuition, fees or room and board balances to the state board. The student shall be required to remit, up to the amount of any other reasonable grant balances, such grant balances to the state board. In the event of extreme hardship as determined by the state board, a student may request waiver of remittance. [I.C., § 33-5607, as added by 2007, ch. 259, § 1, p. 769.]

33-5608. Opportunity scholarship program account. — (1) There is hereby created an account in the state treasury to be designated the “opportunity scholarship program account.”

(2) The account shall consist of moneys appropriated to the account by the legislature, moneys contributed to the account from other sources, and the earnings on such moneys. The executive director of the state board may receive on behalf of the state board any moneys or real or personal property donated, bequeathed, devised or conditionally granted to the state board for purposes of providing funding for such account. Moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in the account.

(3) Earnings from moneys in the account or specified gifts shall be distributed annually to the state board to implement the opportunity scholarship program as provided for under this chapter.

(4) All moneys placed in the account and earnings thereon are hereby perpetually appropriated to the state board for the purpose described in subsection (3) of this section. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of the proper vouchers. Up to five percent (5%) of the annual earnings distribution to the state board, but not to exceed seventy-five thousand dollars (\$75,000), may be used by the state board annually for administrative costs related to the implementation of the provisions of this chapter.

(5) Allowable administrative costs include, but are not limited to, operating expenses for the implementation and maintenance of a database, operating expenses to administer the program, personnel costs necessary to

administer the program and costs related to promoting awareness of the program.

(6) Pending use, surplus moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code. Interest earned on the investments shall be returned to the account. [I.C., § 33-5608, as added by 2007, ch. 259, § 1, p. 769.]

TITLE 34

ELECTIONS

CHAPTER.

1. DEFINITIONS, §§ 34-101 — 34-117.
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CHAPTER 1

DEFINITIONS

SECTION.

- 34-101. "General election" defined — Offices to be filled — Constitutional amendments.
- 34-102. "Primary election" defined — Purposes.
- 34-103. "Special election" defined.
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- 34-105. "Registered elector" defined.
- 34-106. Limitation upon elections.
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- 34-107. "Residence" defined.
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SECTION.

- 34-110. "Election register" defined.
- 34-111. "Combination election record and poll book" defined — Operation.
- 34-112. "County clerk" defined.
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- 34-114. "Tally book" or "tally list" defined.
- 34-115. References to male include female and masculine includes feminine.
- 34-116. Calendar days used in computation of time.
- 34-117. "Judicial nominating election" defined.

34-101. "General election" defined — Offices to be filled — Constitutional amendments. — "General election" means the national, state and county election held on the first Tuesday succeeding the first Monday of November in each even-numbered year.

At these elections there shall be chosen all congressional, state and county officers, including electors of president and vice-president of the United States, as are by law to be elected in such years.

All amendments to the Idaho constitution shall be submitted to the voters for their approval at these elections. [1970, ch. 140, § 1, p. 351; am. 1971, ch. 194, § 1, p. 881.]

STATUTORY NOTES

Cross References. — Campaign contributions, expenditures and lobbyist registration, § 67-6601 et seq.

Presidential preference primary, §§ 34-731 — 34-740.

Prior Laws. — Former §§ 34-101 — 34-105, which comprised 1890-1891, p. 57, §§ 1,

5 (in part), and 160; reen. 1899, p. 33, §§ 1, 5 (in part), and 156; am. R.C., §§ 344-346; C.L., §§ 344-346; C.S., §§ 488-490; I.C.A., §§ 33-101 — 33-103; 1953, ch. 158, §§ 1, 2, p. 252; am. 1961, ch. 19, § 1, p. 21, were repealed by S.L. 1970, ch. 140, § 202.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

DECISIONS UNDER PRIOR LAW

“General Election” Defined.

“General election” is the election at which all state officers are elected; whether election is general or special is determined, not by date on which it is held or authority which designates such date, but by character of election. Doan v. Board of County Comm’rs, 3

Idaho 38, 26 P. 167 (1891).

Words “general election” as generally used in constitutions and statutes, have reference to general elections held for the purpose of electing state and county officers. Kessler v. Fritchman, 21 Idaho 30, 119 P. 692 (1911).

34-102. “Primary election” defined — Purposes. — “Primary election” means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties. Primary elections shall be held on the fourth Tuesday of May in each even-numbered year.

“Presidential primary” or “presidential preference primary” means an election held for the purpose of allowing voters to express their choice for candidates for nominations for president of the United States. Presidential primary elections shall be held in conjunction with the primary election, on the fourth Tuesday of May in each presidential election year. [1970, ch. 140, § 2, p. 351; am. 1971, ch. 194, § 2, p. 881; am. 1975, ch. 174, § 11, p. 469; am. 1979, ch. 309, § 1, p. 833.]

STATUTORY NOTES

Cross References. — Presidential preference primary, §§ 34-731 — 34-740.

Prior Laws. — Former § 34-102 was repealed. See Prior Laws, § 34-101.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

34-103. “Special election” defined. — “Special election” means any election other than a general or primary election held at any time for any purpose provided by law. [1970, ch. 140, § 3, p. 351; am. 1971, ch. 194, § 3, p. 881.]

STATUTORY NOTES

Prior Laws. — Former § 34-103 was repealed. See Prior Laws, § 34-101.

34-104. “Qualified elector” defined. — “Qualified elector” means any person who is eighteen (18) years of age, is a United States citizen and who has resided in this state and in the county at least thirty (30) days next preceding the election at which he desires to vote, and who is registered as required by law. [1970, ch. 140, § 4, p. 351; am. 1971, ch. 194, § 4, p. 881; am. 1972, ch. 350, § 1, p. 1036; am. 1973, ch. 304, § 1, p. 646; am. 1982, ch. 253, § 1, p. 645.]

STATUTORY NOTES

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| Cross References. — Qualifications of electors, § 34-402. Restoration of electors, § 34-404. | Prior Laws. — Former § 34-104 was repealed. See Prior Laws, § 34-101. |
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34-105. “Registered elector” defined. — “Registered elector”, for the purpose of this act, means any “qualified elector”. [1970, ch. 140, § 5, p. 351; am. 1971, ch. 194, § 5, p. 881.]

STATUTORY NOTES

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| Prior Laws. — Former § 34-105 was repealed. See Prior Laws, § 34-101. | are from S.L. 1971, Chapter 194, which is codified as §§ 34-101 to 34-105, 34-107, 34-108, and 34-117. |
| Compiler’s Notes. — The words “this act” | |

34-106. Limitation upon elections. — On and after January 1, 1994, notwithstanding any other provisions of the law to the contrary, there shall be no more than four (4) elections conducted in any county in any calendar year, except as provided in this section, and except that elections to fill vacancies in the United States house of representatives shall be held as provided in the governor’s proclamation.

- (1) The dates on which elections may be conducted are:
 - (a) the first Tuesday in February of each year; and
 - (b) the fourth Tuesday in May of each year; and
 - (c) the first Tuesday in August of each year; and
 - (d) the Tuesday following the first Monday in November of each year.
- (e) In addition to the elections specified in paragraphs (a) through (d) of this subsection, an emergency election may be called upon motion of the governing board of a political subdivision. An emergency exists when there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for a national or local defense, or it is necessary to do emergency work to safeguard life, health or property. Such a special election, if conducted by the county clerk, shall be conducted at the expense of the political subdivision submitting the question.

(2) Candidates for office elected in February, May or August shall take office on the date specified in the certificate of election but not more than sixty (60) days following the election.

(3) Candidates for office elected in November shall take office as provided in the constitution, or on January 1, next succeeding the November election.

(4) The governing board of each political subdivision subject to the provisions of this section, which, prior to January 1, 1994, conducted an election for members of that governing board on a date other than a date permitted in subsection (1) of this section, shall establish as the election date for that political subdivision the date authorized in subsection (1) of this section which falls nearest the date on which elections were previously conducted, unless another date is established by law.

(5) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules, regulations or interpretations for the conduct of election authorized under the provisions of this section.

(6) School districts governed by title 33, Idaho Code, but not including community colleges governed by chapter 21, title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.

(7) Initiative, referendum and recall elections conducted by any political subdivision shall be held on the nearest date authorized in subsection (1) of this section which falls more than forty-five (45) days after the clerk of the political subdivision orders that such initiative, referendum or recall election shall be held. [I.C., § 34-106, as added by 1992, ch. 176, § 2, p. 553; am. 1993, ch. 313, § 3, p. 1157; am. 2007, ch. 92, § 2, p. 271.]

STATUTORY NOTES

Prior Laws. — Former § 34-106, which comprised 1970, ch. 140, § 6, p. 351, was repealed by S.L. 1973, ch. 123, § 1, p. 233.

Another former § 34-106, which comprised S.L. 1959, ch. 145, § 1, was repealed by S.L. 1961, ch. 22, § 1.

Amendments. — The 2007 amendment, by ch. 92, inserted “but not including community colleges governed by chapter 21, title 33, Idaho Code” in subsection (6).

Legislative Intent. — Section 1 of S.L. 1992, ch. 176 read: “It is the finding of the legislature that the process of exercising the elective franchise should be made as accessible as possible for as many citizens as possible. The provisions of this bill will achieve a significant consolidation of elections on four (4) election dates in each year. In addition, this election code, which applies to the various political subdivisions of the state of Idaho, will assure access to the nominating process, registration of potential electors, absentee voting opportunity and an increased visibility of the electoral process to assure public access and increased participation. At a future date, it may be warranted to further consolidate elections as events demonstrate that need.

The goal of providing increased visibility for the electoral process will be well served by this consolidation of elections, by the increased public notice of filing and election deadlines, and the public education which will accompany the implementation of this act.”

Compiler's Notes. — Section 3 of S.L. 2007, ch. 92 provides: “SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates. — Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 4 of S.L. 2007, ch. 92 declared an emergency. Approved March 20, 2007.

JUDICIAL DECISIONS

Cited in: Shoshone-Bannock Tribes v. Fish & Game Comm'n, 42 F.3d 1278 (9th Cir. 1994).

34-106A. "Special presidential and congressional elector" defined. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 34-106A, as added by 1971, ch. 194, § 6, was repealed by S.L. 1972, ch. 350, § 2.

34-107. "Residence" defined. — (1) "Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.

(2) In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which the exemption in section 63-602G, Idaho Code, is filed, and motor vehicle registration.

(3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

(4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(5) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state. [1970, ch. 140, § 7, p. 351; am. 1971, ch. 194, § 7, p. 881; am. 1982, ch. 215, § 1, p. 589; am. 1989, ch. 147, § 1, p. 354; am. 1996, ch. 322, § 34, p. 1029.]

STATUTORY NOTES

Prior Laws. — Former §§ 34-107 — 34-111, which comprised S.L. 1959, ch. 145, §§ 2-6, were repealed by S.L. 1961, ch. 22, § 1.

Effective Dates. — Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

34-108. "Election official" defined. — "Election official" means the secretary of state, any county clerk, registrar, judge of election, clerk of election, canvassing board or board of county commissioners engaged in the

performance of election duties as required by law. [1970, ch. 140, § 8, p. 351; am. 1971, ch. 194, § 8, p. 881.]

STATUTORY NOTES

Prior Laws. — Former § 34-108 was repealed. See Prior Laws, § 34-107.

34-109. “Political party” defined. — “Political party” means an affiliation of electors representing a political group under a given name as authorized by law. [1970, ch. 140, § 9, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-109 was repealed. See Prior Laws, § 34-107.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975); Troutner v. Kempthorne, 142 Idaho 389, 128 P.3d 926 (2006).

34-110. “Election register” defined. — “Election register” means the voter registration cards of all electors who are qualified to appear and vote at the designated polling places. [1970, ch. 140, § 10, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-110 was repealed. See Prior Laws, § 34-107.

34-111. “Combination election record and poll book” defined — Operation. — (1) “Combination election record and poll book” means the book containing a listing of registered electors who are qualified to appear and vote at the designated polling places. An additional copy of the combination election record and poll book may be maintained to record that the elector has voted.

(2) The county clerk shall deliver to the chief election judge in each precinct, as other election supplies and materials are delivered, a list in alphabetical order of all registered electors referred to in section 34-110, Idaho Code. This list shall constitute the combination election record and poll book of each precinct. This list shall include the residence address of each elector. For any given precinct, the list may be divided into two (2) or more separate parts and shall be alphabetical according to the name of the registered elector.

(3) The county clerk shall administer an oath of office to the chief judge of each precinct, before or upon delivering supplies. The county clerk may delegate his authority to administer oath of the chief judge to any officer authorized to administer oaths, including notaries public.

(4) Before entering upon the discharge of their duties, the election judges shall take and subscribe an oath in the combination election record and poll book. Such oaths shall be administered by the chief judge of the precinct. Should the chief judge fail to be present any officer authorized to administer oaths including notaries public may administer oaths to the election judges. Blank oaths of office shall be attached to the combination election record and poll book.

(5) The combination election record and poll book shall be in the manner and form prescribed by the secretary of state.

(6) Immediately after the close of the polls, the names of the electors who voted shall be counted and the number written and certified in the combination election record and poll book. The combination election record and poll book shall be immediately signed by each of the election board judges. [1970, ch. 140, § 11, p. 351; am. 1972, ch. 350, § 3, p. 1036; am. 1982, ch. 137, § 1, p. 388.]

STATUTORY NOTES

Prior Laws. — Former § 34-111 was repealed. See Prior Laws, § 34-107.

Section 7 of S.L. 1982, ch. 137 declared an emergency. Approved March 22, 1982.

Effective Dates. — Section 4 of S.L. 1972, ch. 350 declared an emergency. Approved March 31, 1972.

34-112. “County clerk” defined. — “County clerk” means the clerk of the district court. [1970, ch. 140, § 12, p. 351.]

34-113. “Candidate” defined. — “Candidate” means and includes every person for whom it is contemplated or desired that votes be cast at any political convention, primary, general or special election, and who either tacitly or expressly consents to be so considered, except candidates for president and vice-president of the United States. [1970, ch. 140, § 13, p. 351.]

34-114. “Tally book” or “tally list” defined. — “Tally book” or “tally list” means the forms in which the votes cast for any candidate or special question are counted and totaled at the polling precinct. [1970, ch. 140, § 14, p. 351.]

34-115. References to male include female and masculine includes feminine. — All references to the male elector includes [include] the female elector and the masculine pronoun includes the feminine. [1970, ch. 140, § 15, p. 351.]

STATUTORY NOTES

Compiler’s Notes. — The bracketed word “include” was inserted by the compiler.

34-116. Calendar days used in computation of time. — Calendar days shall be used in all computations of time made under the provisions of this act. In computing time for any act to be done before any election, the first day shall be included and the last, or election day, shall be excluded. Sundays, Saturdays and legal holidays shall be included, but if the time for any act to be done shall fall on Sunday, Saturday or a legal holiday, such act shall be done upon the day following such Sunday, Saturday or legal holiday. [1970, ch. 140, § 16, p. 351; am. 1995, ch. 215, § 1, p. 747.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1970, Chapter 140, which is compiled throughout Title 34 of the Idaho Code.

Effective Dates. — Section 16 of S.L. 1995, ch. 215 declared an emergency. Approved March 17, 1995.

34-117. "Judicial nominating election" defined. — "Judicial nominating election" means an election held for the purpose of selecting justices of the supreme court and judges of the district court as are by law to be selected at such election. This election shall be held on the date of the statewide primary election. [I.C., § 34-117, as added by 1971, ch. 194, § 9, p. 881.]

CHAPTER 2

DUTIES OF OFFICERS

SECTION.

- 34-201. Secretary of state chief election officer.
- 34-202. Secretary of state to distribute comprehensive directives and instructions relating to election laws to all county clerks.
- 34-203. Assistance and advice to county clerks.
- 34-204. Conferences with county clerks on administration of election laws.
- 34-205. Duties of secretary of state relating to election laws.
- 34-206. General supervision of administration of election laws by county clerks.
- 34-207. [Repealed.]

SECTION.

- 34-208. Duties of county clerks relating to supervision of election laws.
- 34-209. Powers of county clerks.
- 34-210. Preparation of ballots, papers, documents, records, and other materials and supplies required.
- 34-211. Office of county clerk open as long as polls are open.
- 34-212. Reports to prosecuting attorney of noncompliance with election laws by county clerk.
- 34-213. Mandamus to enforce compliance by county clerk.
- 34-214. Noncompliance by local county election officials — Enforcement by county clerk.
- 34-215. Appeals by aggrieved persons.
- 34-216. Grievance procedures.

34-201. Secretary of state chief election officer. — The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws.

The secretary of state is responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed service voters and overseas voters with respect to elec-

tions for federal office as required by section 102 of the uniformed and overseas citizens absentee voting act (42 U.S.C. section 1973 et seq.).

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the uniformed and overseas citizens absentee voting act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States armed forces, mobilization of those forces, including state national guard and reserve components of this state, the secretary of state may prescribe, by directive, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in this state. [1970, ch. 140, § 17, p. 351; am. 2003, ch. 48, § 1, p. 181.]

STATUTORY NOTES

Cross References. — Penalty for official neglect or malfeasance, § 18-2301.

Presidential preference primaries, duties, §§ 34-731 — 34-740.

Prior Laws. — Former §§ 34-201 — 34-207, which comprised 1890-1891, p. 57, §§ 6-11; reen. 1899, p. 33, §§ 6-11; reen. R. C., §§ 347-352; 1913, ch. 114, p. 433; C. L., §§ 347-352; C. S., §§ 491-497; 1921, ch. 216, § 1, p. 473; I. C. A., §§ 33-201 — 33-207; 1945, ch. 135, §§ 1, 2, p. 204; 1959, ch. 221, § 9, p. 484; am. 1961, ch. 9, § 1, p. 11; am.

1963, ch. 83, § 1, p. 277; am. 1965, ch. 115, § 1, p. 223; am. 1965, ch. 315, §§ 1, 2, p. 878; am. 1969, ch. 115, §§ 1, 2, p. 373, were repealed by S.L. 1970, ch. 140, § 203.

Federal References. — Section 102 of the uniformed and overseas citizens absentee voting act, referred to in the second paragraph, is codified as 42 U.S.C.S. § 1973ff-1.

Effective Dates. — Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

JUDICIAL DECISIONS

Cited in: *Cenarrusa v. Peterson*, 95 Idaho 395, 509 P.2d 1316 (1973).

34-202. Secretary of state to distribute comprehensive directives and instructions relating to election laws to all county clerks. — In carrying out his responsibility under section 17 [§ 34-201], the secretary of state shall cause to be prepared and distributed to each county clerk detailed and comprehensive written directives and instructions relating to and based upon the election laws as they apply to elections, registration of electors and voting procedures which by law are under the direction and control of the county clerk. Such directives and instructions shall include sample forms of ballots, papers, documents, records and other materials and supplies required by such election laws. The secretary of state shall prescribe a form for voter registration cards based on the voter registration laws and, from time to time, shall cause to be prepared and distributed to each county clerk such written corrections of such directives and instructions and of the form for registration cards as are necessary to maintain uniformity in the application, operation and interpretation of and to reflect changes in the election laws. Each county clerk affected thereby shall comply with such directives and instruction, and corrections thereof, and shall provide voter registration cards prepared in accordance with the prescribed form. [1970, ch. 140, § 18, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-202 was repealed. See Prior Laws, § 34-201.

tion number "34-201" in the first sentence was inserted by the compiler.

Compiler's Notes. — The bracketed sec-

JUDICIAL DECISIONS

Cited in: *Cenarrusa v. Peterson*, 95 Idaho 395, 509 P.2d 1316 (1973).

34-203. Assistance and advice to county clerks. — In carrying out his responsibility under section 17 [§ 34-201], the secretary of state shall assist and advise each county clerk with regard to the application, operation and interpretation of the election laws as they apply to elections, registration of electors and voting procedures which by laws are under the direction and control of the county clerk. [1970, ch. 140, § 19, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-203 was repealed. See Prior Laws, § 34-201.

tion number "34-201" was inserted by the compiler.

Compiler's Notes. — The bracketed sec-

34-204. Conferences with county clerks on administration of election laws. — In carrying out his responsibility under section 17 [§ 34-201], the secretary of state shall cause to be organized and conducted at convenient places and times in this state at least three (3) conferences on the administration of the election laws. The secretary of state shall cause written notice of the place and time of each conference to be given to each county clerk. Each county clerk or his designated deputy shall attend at least one (1) of the conferences and shall comply with the instructions given under the authority of the secretary of state at each conference such county clerk attends. [1970, ch. 140, § 20, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-204 was repealed. See Prior Laws, § 34-201.

tion number "34-201" in the first sentence was inserted by the compiler.

Compiler's Notes. — The bracketed sec-

34-205. Duties of secretary of state relating to election laws. — The secretary of state shall:

(1) Prepare and cause to be printed, in appropriate and convenient form, periodic compilations and digests of the election laws.

(2) Distribute in appropriate quantities to the county clerks for use by such county clerks and by election boards, copies of such compilations and digests and the sample form of such supplies and materials necessary to conduct elections as the secretary of state considers appropriate, including poll books, tally sheets, return sheets and abstract of vote sheets.

(3) Make such compilations and digests available for distribution, free or at cost, to interested persons. [1970, ch. 140, § 21, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-205 was repealed. See Prior Laws, § 34-201.

34-206. General supervision of administration of election laws by county clerks. — Subject to and in accordance with the directives and instructions prepared and distributed or given under the authority of the secretary of state, each county clerk shall exercise general supervision of the administration of the election laws by each local election official in his county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in such administration by local election officials. Such directives and instructions shall be directed to and shall be complied with by each local election official affected thereby. [1970, ch. 140, § 22, p. 351; am. 1971, ch. 69, § 1, p. 155.]

STATUTORY NOTES

Cross References. — Presidential preference primaries, duties, § 34-739.

Prior Laws. — Former § 34-206 was repealed. See Prior Laws, § 34-201.

JUDICIAL DECISIONS

Cited in: *Cenarrusa v. Peterson*, 95 Idaho 395, 509 P.2d 1316 (1973).

34-207. Directives of county clerks. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 34-207 was repealed by S.L. 1970, ch. 140, § 203. See Prior Laws, § 34-201.

Compiler's Notes. — This section, which comprised § 23, S.L. 1970, ch. 140, was repealed by S.L. 1971, ch. 69, § 2.

34-208. Duties of county clerks relating to supervision of election laws. — In carrying out his exercise of general supervision under section 34-206, each county clerk shall:

(1) Require that each local election official shall use such ballots, papers, documents, records and other materials and supplies as directed by the secretary of state.

(2) Require each local election official in his county to submit reports pertaining to the administration of the election laws by such local election official. Each local election official shall comply with any such requirement.

(3) Inspect and observe the administration of the election laws by any local election official in his county at any time he deems necessary.

(4) Carry on a program of in-service training for local election officials in his county by periodically distributing to them such bulletins, manuals and other informational instructional materials and by establishing and conducting such classes of instruction pertaining to the administration of the election laws by local election officials as the county clerk considers desirable. [1970, ch. 140, § 24, p. 351; am. 1971, ch. 69, § 3, p. 155.]

STATUTORY NOTES

Cross References. — Requirements for printing of ballots and ballot labels, § 34-2418.

Effective Dates. — Section 4 of S.L. 1971, ch. 69 declared an emergency. Approved March 8, 1971.

34-209. Powers of county clerks. — (1) The county clerk may employ such personnel and procure such equipment, supplies, materials, books, papers, records and facilities of every kind as he considers necessary to facilitate and assist in carrying out his functions in connection with administering the election laws; except that procurement of voting machines or vote tally systems shall be conducted in accordance with the provisions of section 34-2405, Idaho Code.

(2) The necessary expenses incurred by the county clerk in administering the election laws, including reasonable rental for polling places, shall be allowed by the board of commissioners and paid out of the county treasury.

(3) The county clerk and his deputies may administer oaths and affirmations in connection with the performance of their functions in administering the election laws. [1970, ch. 140, § 25, p. 351; am. 1972, ch. 131, § 1, p. 260.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1972, ch. 131 declared an emergency. Approved March 13, 1972.

34-210. Preparation of ballots, papers, documents, records, and other materials and supplies required. — Subject to any applicable election law, the county clerk may devise, prepare and use in his administration of the election laws the ballots, papers, documents, records and other materials and supplies required or permitted by the election laws or otherwise necessary in such administration by such county clerk. [1970, ch. 140, § 26, p. 351.]

STATUTORY NOTES

Cross References. — Requirements for printing of ballots and ballot labels, § 34-2418.

34-211. Office of county clerk open as long as polls are open. — On the day of any general, special or primary election held throughout the county, the county clerk shall keep his office open for the transaction of business pertaining to the election from the time the polls are opened in the morning continuously until the polls are closed. [1970, ch. 140, § 27, p. 351.]

34-212. Reports to prosecuting attorney of noncompliance with election laws by county clerk. — (1) Any person having knowledge of any failure of a county clerk to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of

state may notify the prosecuting attorney of the county. Upon receipt of such notification the prosecuting attorney shall proceed immediately to investigate the alleged failure of the county clerk to comply. Upon the conclusion of the investigation the prosecuting attorney shall advise and direct the county clerk with regard to how he must proceed in connection with the matter. The county clerk shall proceed immediately to comply with the directive of the prosecuting attorney.

(2) If the prosecuting attorney, upon the conclusion of an investigation under subsection (1) of this section, determines that the county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, and that such failure to comply involves a violation by the county clerk of any statute, the violation of which is punishable by a criminal penalty or forfeiture of office, the prosecuting attorney shall promptly proceed to prosecute such violation by the county clerk.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, or who violates any statute. [1970, ch. 140, § 28, p. 351.]

STATUTORY NOTES

Cross References. — Criminal offenses relating to election laws, § 18-2301 et seq.

34-213. Mandamus to enforce compliance by county clerk. —

(1) Whenever it appears to the secretary of state that a county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, the secretary of state may apply to the appropriate district court or a judge thereof for a writ of mandamus to compel the county clerk to comply with such directive or instruction. In any such mandamus proceeding it is a defense that the directive or instruction in question is unlawful.

(2) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state. [1970, ch. 140, § 29, p. 351.]

34-214. Noncompliance by local county election officials — Enforcement by county clerk. —

(1) Whenever it appears to a county clerk that any local election official in his county has failed to comply with any election law or any directive or instruction prepared and issued by the county clerk, the county clerk may issue an order to such local election official. The order shall specify in what manner the local election official has failed to comply, indicate the proper manner of compliance and direct the local election official to so comply with such law or directive or instruction within a designated reasonable time.

(2) If the local election official fails to comply as directed by the order of the county clerk, the county clerk may apply to a judge of the district court for the county in which the county clerk holds office for an order, returnable within five (5) days from the date thereof, to compel the local election official to comply with the order of the county clerk or to show cause why he should not be so compelled. Upon receipt of the application of the county clerk the judge shall issue the appropriate order, which shall be final. The judge shall dispose of the matter as soon as possible and not more than ten (10) days after his order is returned by the local election official.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against the non-complying local election official. [1970, ch. 140, § 30, p. 351.]

34-215. Appeals by aggrieved persons. — (1) Any person adversely affected by any act or failure to act by the secretary of state or a county clerk under any election law, or by any order, rule, regulation, directive or instruction made under the authority of the secretary of state or of a county clerk under any election law, may appeal therefrom to the district court for the county in which the act or failure to act occurred or in which the order, rule, regulation, directive or instruction was made or in which such person resides.

(2) Any party to the appeal proceedings in the district court under subsection (1) of this section may appeal from the decision of the district court to the supreme court.

(3) The district courts and supreme court, in their discretion, may give such precedence on their dockets to appeals under this section as the circumstances may require.

(4) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against any act or failure to act by the secretary of state or a county clerk under any election law or against any order, rule, regulation, directive or instruction made under the authority of the secretary of state or a county clerk under any election law. [1970, ch. 140, § 31, p. 351.]

34-216. Grievance procedures. — The secretary of state shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, establishing a state-based administrative complaint procedure as required by the help America vote act (P.L. 107-252). [I.C., § 34-216, as added by 2003, ch. 48, § 2, p. 181.]

STATUTORY NOTES

Federal References. — The help America vote act, referred to in this section, is codified as 42 U.S.C.S. § 15301 et seq.

Effective Dates. — Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

CHAPTER 3

ELECTION PRECINCTS AND JUDGES

SECTION.

- 34-301. Establishment of election precincts by county commissioners — Lists and maps to be furnished to secretary of state.
- 34-302. Designation of precinct polling places.
- 34-303. Appointment of election judges by county clerk.

SECTION.

- 34-304. Challengers — Watchers.
- 34-305. County clerk chief county elections officer.
- 34-306. Precinct boundary requirements.
- 34-307. Precinct boundaries maintained.
- 34-308. Mail ballot precinct.

34-301. Establishment of election precincts by county commissioners — Lists and maps to be furnished to secretary of state. — The board of county commissioners in each county shall establish a convenient number of election precincts therein. The board of county commissioners may establish an absentee voting precinct for each legislative district within the county. The boundaries of such absentee precincts shall be the same as those of the legislative districts for which they were established. The board shall have the authority to create new or consolidate established precincts only within the boundaries of the legislative districts provided by section 67-202, Idaho Code. No county shall have less than two (2) precincts. This board action shall be done no later than January 15 in a general election year. The January 15 deadline shall be waived during a general election year in which a legislative or court ordered redistricting plan is adopted. In such cases, any precinct boundary adjustments shall be accomplished by the county commissioners as soon as is practicable.

The county clerk of each county shall provide, and the secretary of state shall maintain in his office, a current and accurate report of the following:

- (a) A list of all precincts within the county;
- (b) A map of all precincts within the county;
- (c) A count of voters registered for the latest general election, by precinct;
- (d) A count of votes cast at the latest general election, by precinct. [1970, ch. 140, § 32, p. 351; am. 1971, ch. 210, § 1, p. 919; am. 1972, ch. 141, § 1, p. 308; am. 1973, ch. 177, § 1, p. 393; am. 1974, ch. 212, § 1, p. 1557; am. 1976, ch. 73, § 1, p. 242; am. 1977, ch. 8, § 3, p. 16; am. 1992, ch. 152, § 1, p. 458.]

STATUTORY NOTES

Prior Laws. — Former §§ 34-301 — 34-304 which comprised 1890-1891, p. 57, §§ 20-23, 36; am. 1897, p. 29, § 2; reen. 1899, p. 33, §§ 12-15, 27; reen. R.C., §§ 353, 356; am. R.C., §§ 354, 355; am. 1913, ch. 92, §§ 13, 14, p. 376; reen. C.L., §§ 353-356; C.S., §§ 498-501; I.C.A., §§ 33-301 — 33-304; am. 1953,

ch. 233, §§ 2, 3, p. 348; am. 1955, ch. 73, § 1, p. 143, were repealed by S.L. 1970, ch. 140, § 204.

Effective Dates. — Section 2 of S.L. 1992, ch. 152 declared an emergency. Approved April 2, 1992.

34-302. Designation of precinct polling places. — The board shall, not less than thirty (30) days before any election, designate a suitable polling place for each election precinct. Insofar as possible, the board shall

designate the same polling place for the general election which it designated for the primary election. The physical arrangements of the polling place shall be sufficient to guarantee all voters the right to cast a secret ballot. All polling places designated as provided herein, shall conform to the accessibility standards adopted by the secretary of state pursuant to the "Voting Accessibility for the Elderly and Handicapped Act," P.L. 98-435. The expense of providing such polling places shall be a public charge and paid out of the county treasury. [1970, ch. 140, § 33, p. 351; am. 1973, ch. 304, § 2, p. 646; am. 1978, ch. 38, § 1, p. 67; am. 1985, ch. 115, § 2, p. 237.]

STATUTORY NOTES

Cross References. — Absent electors' polling place required, § 34-1006.

Preparation of polling places for machine voting, § 34-2415.

Prior Laws. — Former § 34-302 was re-

pealed. See Prior Laws, § 34-301.

Federal References. — The Voting Accessibility for the Elderly and Handicapped Act, P.L. 98-435, referred to in this section, is compiled as 42 U.S.C.S. § 1973 *et seq.*

34-303. Appointment of election judges by county clerk. — The county clerk shall appoint two (2) or more election judges, one (1) of whom shall be designated chief judge, and the number of clerks deemed necessary by him for each polling place. In the event a single polling place is designated for two (2) or more precincts, an individual may serve simultaneously on the election board for two (2) or more precincts thus served by a single polling place. The precinct committeemen shall recommend persons for the position in their respective precincts to the county clerk in writing at least ten (10) days prior to the date on which any appointment shall be made and the county clerk shall appoint the judges from such lists if the persons recommended are qualified.

The chief election judge shall be responsible for the conduct of the proceedings in the polling place. Compensation for all election personnel shall be determined by the board of county commissioners, and not less than the minimum wage as prescribed by the laws of the state of Idaho.

Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election.

In order to provide for a greater awareness of the election process, the rights and responsibilities of voters and the importance of participating in the electoral process, as well as to provide additional members of precinct boards, a county clerk may appoint not more than two (2) students per precinct to serve under the direct supervision of election board members designated by the county clerk. A student may be appointed, notwithstanding lack of eligibility to vote, if the student possesses the following qualifications:

(1) Is at least seventeen (17) years of age at the time of the election for which he or she is serving as a member of an election board.

(2) Is a citizen of the United States. [1970, ch. 140, § 34, p. 351; am. 1971, ch. 210, § 2, p. 919; am. 1977, ch. 8, § 4, p. 16; am. 2003, ch. 48, § 3, p. 181; am. 2004, ch. 113, § 1, p. 386.]

STATUTORY NOTES

Prior Laws. — Former § 34-303 was repealed. See Prior Laws, § 34-301.

Effective Dates. — Section 5 of S.L. 1977, ch. 8 declared an emergency. Approved February 23, 1977.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

34-304. Challengers — Watchers. — The county clerk shall, upon receipt of a written request, such request to be received no later than five (5) days prior to the day of election, direct that the election judges permit one (1) person authorized by each political party to be at the polling place for the purpose of challenging voters, and shall, if requested, permit any one (1) person authorized by a candidate, several candidates or political party, to be present to serve as a watcher to observe the conduct of the election. Such authorization shall be evidenced by a writing signed by the county chairman and secretary of the political party, or by the candidate or candidates, and filed with the county clerk. Where the issue before the electors is other than the election of officers, the clerk shall, upon receipt of a written request, such request to be received no later than five (5) days prior to the date of voting on the issue or issues, direct that the election judges permit one (1) pro and one (1) con person to be at the polling place for the purpose of challenging voters and to observe the conduct of the election. Such authorization shall be evidenced in writing signed by the requesting person and shall state which position relative to the issue or issues the person represents. Persons who are authorized to serve as challengers or watchers shall wear a visible name tag which includes their respective titles. A watcher is entitled to observe any activity conducted at the location at which the watcher is serving, provided however, that the watcher does not interfere with the orderly conduct of the election. If the watchers are present at the polling place when ballots are counted they shall not absent themselves until the polls are closed. A watcher serving at a central counting station may be present at any time the station is open for the purpose of processing or preparing to process election results and until the election officers complete their duties at the station. If the county clerk does not receive the list of names of those desired to be present for the purpose of either poll watching or challenging within the time prescribed above, the clerk shall not allow the presence of such persons later seeking to serve in those capacities. [1970, ch. 140, § 35, p. 351; am. 1972, ch. 141, § 2, p. 308; am. 1973, ch. 304, § 3, p. 646; am. 2006, ch. 70, § 1, p. 214.]

STATUTORY NOTES

Prior Laws. — Former § 34-304 was repealed. See Prior Laws, § 34-301.

Amendments. — The 2006 amendment, by ch. 70, rewrote the section, which formerly read: "The county clerk shall, upon receipt of a written request, such request to be received no later than five (5) days prior to the day of election, direct that the election judges permit one (1) person authorized by each political

party to be at the polling place for the purpose of challenging voters, and shall, if requested, permit any candidate, or one (1) person authorized by a candidate, several candidates or political party, to be present to watch the receiving and counting of the votes. Such authorization shall be evidenced by a writing signed by the county chairman and secretary of the political party, or by the candidate or

candidates, and filed with the county clerk. If the county clerk does not receive the list of names of those which the parties desire to be present for the purpose of either poll watching or challenging within the time prescribed above, the clerk shall not allow the presence of such persons later seeking to serve in those capacities. Persons who are authorized to serve as challengers or watchers shall wear a

visible name tag which includes their respective titles. Persons permitted to be present to watch the counting of the votes shall not absent themselves until the polls are closed."

Effective Dates. — Section 3 of S.L. 1972, ch. 141 declared an emergency. Approved March 14, 1972.

Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

34-305. County clerk chief county elections officer. — The county clerk is the chief elections officer of his county and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. The county clerk shall comply with the lawful directives and instructions given him by the secretary of state. [I.C., § 34-305, as added by 1971, ch. 210, § 3, p. 919.]

34-306. Precinct boundary requirements. — (1) Precinct boundaries shall follow visible, easily recognizable physical features on the ground including, but not limited to, streets, railroad tracks, roads, streams and lakes. The exception shall be when a precinct boundary coincides with a city, county, Indian reservation or school district boundary which does not follow a visible feature.

(2) In order to achieve compliance with the requirements of this section, and simultaneously maintain legislative district boundaries which may not follow visible features, a county may designate subprecincts within precincts, the internal boundaries of which do not follow visible features. [I.C., § 34-306, as added by 1977, ch. 8, § 2, p. 16; am. 1989, ch. 261, § 1, p. 639; am. 1992, ch. 284, § 1, p. 875.]

STATUTORY NOTES

Compiler's Notes. — Section 1 of S.L. 1977, ch. 8 read: "The Idaho legislative council is designated the state coordinating agency for purposes of implementation of the provisions of public law 94-171 [13 U.S.C.S. § 141]. Not later than March 1, 1977, each county clerk shall provide the legislative council with a map of the precincts of the county. Map standards shall comply with the requirements promulgated by the census bureau for

the purposes of the 1980 census of the United States. Precinct boundaries shall comply with the provisions of section 34-306, Idaho Code."

Effective Dates. — Section 5 of S.L. 1977, ch. 8 declared an emergency. Approved February 23, 1977.

Section 2 of S.L. 1992, ch. 284 provided that the act would become effective January 1, 1993.

34-307. Precinct boundaries maintained. — From January 15 in any year ending in 8 through September 15 in any year ending in 1, the board of county commissioners shall make no changes in precinct boundaries, except that a single precinct may be divided into two (2) or more new precincts wholly contained within the original precinct. [I.C., § 34-307, as added by 1998, ch. 276, § 1, p. 907.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 276 declared an emergency. Approved March 24, 1998.

34-308. Mail ballot precinct. — A precinct within the county which contains no more than one hundred twenty-five (125) registered electors at the last general election, may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year. Such a designation shall apply thereafter to all elections conducted within the precinct until revoked by the board of county commissioners. Having designated a mail ballot precinct, there shall be no voting place established within the precinct. Elections in a mail ballot precinct shall be conducted in a manner consistent with absentee voting with the following special provisions.

- (1) The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct, and shall affix to the return envelope, postage sufficient to return the ballot.
- (2) The ballot shall be mailed no sooner than twenty-four (24) days prior to the election day and no later than the fourteenth day prior to the election.
- (3) The clerk shall make necessary provisions to segregate mail ballot precinct ballots by precinct, and for all purposes of the election, the precinct integrity shall be maintained.
- (4) The clerk shall make available in the office of the clerk, registration on election day for any individual who is eligible to vote and who resides in a mail ballot precinct and has not previously registered. The clerk shall provide an official polling place in the office of the clerk and a qualified elector who registers on election day and resides in a mail ballot precinct shall be allowed to vote at the office of the clerk. [I.C., § 34-308, as added by 2004, ch. 165, § 1, p. 540.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2004, ch. 165 declared an emergency. Approved March 23, 2004.

CHAPTER 4

VOTERS — PRIVILEGES, QUALIFICATIONS AND REGISTRATION

| SECTION. | SECTION. |
|---|---|
| 34-401. Electors privileged from arrest during attendance at polling place — Exception. | 34-407. Procedure for registration. |
| 34-402. Qualifications of electors. | 34-408. Closing of register — Time limit. |
| 34-403. Disqualified electors not permitted to vote. | 34-408A. Election day registration. |
| 34-404. Registration of electors. | 34-409. [Repealed.] |
| 34-405. Gain or loss of residence by reason of absence from state. | 34-410. Mail registration. |
| 34-406. Appointment of registrars. | 34-410A. Absentee registration for uniformed and overseas citizens. |
| | 34-411. Application for registration — Contents. |
| | 34-411A. [Repealed.] |

SECTION.

34-412. Qualifications for registration.

34-413. Reregistration of elector who changes residence.

34-414, 34-415. [Repealed.]

34-416. Registration cards.

34-417. Changes in boundaries of precinct — Alteration of registration cards.

34-418. Weekly review of new registration cards — Report to interested officials.

34-419. Suspension of registration of electors who appear not to be citizens of the United States.

34-420. No elector's registration shall be canceled while he is serving in the armed forces — Exception.

34-421 — 34-430. [Repealed.]

34-431. Challenges of entries in election register.

SECTION.

34-432. Correction of election register from challenges at election.

34-433. Monthly correction of election register from reported deaths.

34-434. Retention of notices and correspondence relating to correction of election registers.

34-435. Cancellation of registrations following any general election of those not voting for four years.

34-436. Retention of correspondence relating to cancellation of voter's registration.

34-437. Furnishing lists of registered electors — Restrictions.

34-437A. Statewide list of registered electors.

34-437B. Furnishing lists of registered electors to school districts.

34-438. [Repealed.]

34-439. Disclosures in elections to authorize bonded indebtedness.

34-401. Electors privileged from arrest during attendance at polling place — Exception. — Electors are privileged from arrest, except for treason, a felony or breach of the peace, during their attendance at a polling place. [1970, ch. 140, § 36, p. 351.]

STATUTORY NOTES

Cross References. — Penalty for fraudulent or illegal registration, §§ 18-2321, 18-2322.

School elections, § 33-401 et seq.

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 205:

34-401. (1890-1891, p. 57, § 2; reen. 1899, p. 33, § 2; compiled and reen. R.C. & C.L., § 357; C.S., § 502; I.C.A., § 33-401.)

34-402. (1890-1891, p. 57, § 3; am. 1893, p. 35, § 1; am. 1895, p. 7, § 1; reen. 1899, p. 33, § 3; reen. R.C. & C.L., § 358; C.S., § 503; I.C.A., § 33-402.)

34-403. (1890-1891, p. 57, § 4; reen. 1899,

p. 33, § 4; reen. R.C. & C.L., § 359; C.S., § 504; I.C.A., § 33-403.)

34-404. (1907, p. 170, § 1; reen. R.C. & C.L., § 360; C.S., § 505; I.C.A., § 33-404.)

34-405. (1907, p. 170, § 2; am. R.C., § 361; am. 1913, ch. 92, § 15, p. 377; reen. C.L., § 361; C.S., § 506; I.C.A., § 33-405.)

34-406. (1907, p. 170, § 3; reen. R.C. & C.L., § 362; C.S., § 507; I.C.A., § 33-406.)

34-407. (1907, p. 170, § 4; reen. R.C., § 363; am. 1913, ch. 92, § 16, p. 377; reen. C.L., § 363; C.S., § 508; I.C.A., § 33-407.)

34-408. (1963, ch. 268, § 1, p. 681.)

34-409. (1963, ch. 268, § 2, p. 681.)

34-410. (1963, ch. 268, § 3, p. 681.)

34-402. Qualifications of electors. — Every male or female citizen of the United States, eighteen (18) years old, who has resided in this state and in the county for thirty (30) days where he or she offers to vote prior to the day of election, if registered within the time period provided by law, is a qualified elector. [1970, ch. 140, § 37, p. 351; am. 1971, ch. 192, § 1, p. 874; am. 1972, ch. 392, § 1, p. 1131; am. 1973, ch. 304, § 4, p. 646; am. 1982, ch. 253, § 2, p. 645.]

STATUTORY NOTES

Cross References. — "Qualified elector" defined, § 34-104.

Prior Laws. — Former § 34-402 was repealed. See Prior Laws, § 34-401.

JUDICIAL DECISIONS

Cited in: *Noh v. Cenarrusa*, 137 Idaho 798, 53 P.3d 1217 (2002).

RESEARCH REFERENCES

A.L.R. — Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 A.L.R.3d 303.

Residence or domicil of student or teacher for purpose of voting. 44 A.L.R.3d 797.

Residence of students for voting purposes. 44 A.L.R.3d 797.

Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

Constitutionality of voter participation provisions for primary elections. 120 A.L.R.5th 125.

34-403. Disqualified electors not permitted to vote. — No elector shall be permitted to vote if he is disqualified as provided in article 6, sections 2 and 3 of the state constitution. [1970, ch. 140, § 38, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-403 was repealed. See Prior Laws, § 34-401.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Polygamists.

Territorial statute withholding elective franchise from polygamists or members of any organization which taught or encouraged

polygamy and prescribing test oath was not repugnant to federal constitution. *Wooley v. Watkins*, 2 Idaho 590, 22 P. 102 (1889).

34-404. Registration of electors. — All electors must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and complete registration card is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code. [1970, ch. 140, § 39, p. 351; am. 1971, ch. 192, § 2, p. 874; am. 1972, ch. 197, § 1, p. 498; am. 1987, ch. 256, § 2, p. 519; am. 1997, ch. 356, § 1, p. 1051.]

STATUTORY NOTES

Prior Laws. — Former § 34-404 was repealed. See Prior Laws, § 34-401.

Effective Dates. — Section 5 of S.L. 1987, ch. 256, (approved April 1, 1987 at 9:45 AM) declared an emergency. However, such section

was repealed by § 1, of S.L. 1987, ch. 252 (approved and effective April 1, 1987 at 2:50 PM).

Section 2 of S.L. 1972, ch. 197 declared an emergency. Approved March 21, 1972.

JUDICIAL DECISIONS

Cited in: *Cenarrusa v. Peterson*, 95 Idaho 395, 509 P.2d 1316 (1973).

DECISIONS UNDER PRIOR LAW

Condition Precedent to Voting.

Registration is condition precedent to right to vote. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

RESEARCH REFERENCES

A.L.R. — Validity of college or university activity in student housing facilities. 39 regulation of political or voter registration A.L.R.4th 1137.

34-405. Gain or loss of residence by reason of absence from state.

— For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his absence while employed in the service of this state or the United States, while a student of any institution of learning, while kept at any state institution at public expense, nor absent from the state with the intent to have this state remain his residence. If a person is absent from this state but intends to maintain his residence for voting purposes here, he shall not register to vote in any other state during his absence. [1970, ch. 140, § 40, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-405 was repealed. See Prior Laws, § 34-401.

34-406. Appointment of registrars. — The county clerk shall provide for voter registration in the clerk's office and may appoint registrars to assist in voter registration throughout the county.

The county clerk shall provide all political parties within the county with a supply of the mail registration form prescribed in section 34-410, Idaho Code. [I.C., § 34-406, as added by 1994, ch. 67, § 3, p. 137.]

STATUTORY NOTES

Prior Laws. — Former § 34-406, which comprised 1970, ch. 140, § 41, p. 351; am. 1971, ch. 192, § 3, p. 874; am. 1972, ch. 392, § 2, p. 1131; am. 1975, ch. 21, § 1, p. 30; am. 1980, ch. 271, § 1, p. 711; am. 1982, ch. 76, § 1, p. 144; am. 1989, ch. 418, § 1, p. 1022, was repealed by S.L. 1994, ch. 67, § 2, effective January 1, 1995.

Another former § 34-406 was repealed. See Prior Laws, § 34-401.

Compiler's Notes. — Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was "to exempt Idaho from compli-

ance with the National Voter Registration Act of 1993, as provided in section 4(b)(2) of that act."

Effective Dates. — Section 8 of S.L. 1994, ch. 67 provided that "An emergency existing therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sections of this act shall be in full force and effect on and after January 1, 1995." Approved March 7, 1994.

34-407. Procedure for registration. — (1) Any county clerk or official registrar shall register without charge any elector who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.

(2) Upon receipt of a written application to the county clerk from any elector who, by reason of illness or physical incapacity is prevented from personally appearing in the office of the county clerk or before an official registrar, the county clerk or an official registrar so directed by the county clerk shall register such elector at the place of abode of the elector. [1970, ch. 140, § 42, p. 351; am. 1971, ch. 192, § 4, p. 874; am. 1991, ch. 337, § 1, p. 873; am. 1995, ch. 215, § 2, p. 747.]

STATUTORY NOTES

Prior Laws. — Former § 34-407 was repealed. See Prior Laws, § 34-401.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Substantial Compliance.

Strict, literal compliance with provisions of law as to registration will not be required in absence of fraud or intentional wrong. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

When person otherwise qualified to vote

diligently attempts to register in manner and time provided by law and does everything in his power to comply with law, he cannot be deprived of vote by failure of officers to do their duty. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

34-408. Closing of register — Time limit. — (1) No elector may register in the office of the county clerk within twenty-four (24) days preceding any election held throughout the county in which he resides for the purpose of voting at such election; provided however, a legible, accurate and complete registration card received in the office of the county clerk during the twenty-four (24) day period preceding an election shall be accepted and held by the county clerk until the day following the election when registration reopens, at which time the registration shall become effective. This deadline shall also apply to any registrars the county clerk may have appointed.

(2) Any elector who will complete his residence requirement or attain the requisite voting age during the period when the register of electors is closed may register prior to the closing of the register.

(3) Notwithstanding subsection (1) of this section, an individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in section 34-1006, Idaho Code. [1970, ch. 140, § 43, p. 351; am. 1971, ch. 192, § 5, p. 874; am. 1974, ch. 172, § 1, p. 1431; am. 1981, ch. 105, § 1, p. 159; am. 1994, ch. 67, § 4, p. 137; am. 2001, ch. 99, § 1, p. 248; am. 2005, ch. 127, § 1, p. 412.]

STATUTORY NOTES

Prior Laws. — Former § 34-408 was repealed. See Prior Laws, § 34-401.

Compiler's Notes. — Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was "to exempt Idaho from compliance with the National Voter Registration Act

of 1993, as provided in section 4(b)(2) of that act."

Effective Dates. — Section 8 of S.L. 1994, ch. 67 provided that "An emergency existing therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of

this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sec-

tions of this act shall be in full force and effect on and after January 1, 1995." Approved March 7, 1994.

34-408A. Election day registration. — An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration card, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

(1) Showing a driver's license or Idaho identification card issued through the department of transportation; or

(2) Showing any document which contains a valid address in the precinct together with a picture identification card; or

(3) Showing a current valid student identification card from a post-secondary educational institution in Idaho accompanied with a current student fee statement that contains the student's valid address in the precinct together with a picture identification card.

Election day registration provided in this section shall apply to all elections conducted under title 34, Idaho Code, and to school district and municipal elections.

An individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in section 34-1006, Idaho Code. [I.C., § 34-408A, as added by 1994, ch. 67, § 5, p. 137; am. 1995, ch. 215, § 3, p. 747; am. 1997, ch. 356, § 2, p. 1051.]

STATUTORY NOTES

Compiler's Notes. — Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was "to exempt Idaho from compliance with the National Voter Registration Act of 1993, as provided in section 4(b)(2) of that act."

Effective Dates. — Section 8 of S.L. 1994, ch. 67 provided that "An emergency existing

therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sections of this act shall be in full force and effect on and after January 1, 1995." Approved March 7, 1994.

34-409. County clerk's office — Hours open on the final day for registration. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 34-409 was repealed. See Prior Laws, § 34-401.

Compiler's Notes. — This section which

comprised 1970, ch. 140, § 44, p. 351; am. 1994, ch. 67, § 6, p. 137, was repealed by S.L. 2001, ch. 99, § 4.

34-410. Mail registration. — Any elector may register by mail for any election. Any mail registration application must be received by the county clerk prior to the close of registration as provided in section 34-408, Idaho Code, provided that any mail registration application postmarked not later than twenty-five (25) days prior to an election shall be deemed timely.

The secretary of state shall prescribe the form for the mail registration application. This mail application form shall be available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

Any federal mail registration form adopted pursuant to the provisions of the national voter registration act of 1993 (P.L. 103-31) shall also be accepted as a valid registration, if such form is postmarked not later than twenty-five (25) days prior to an election.

The county clerk shall prepare and issue by first class nonforwardable mail to each elector registering by mail a verification of registration containing the name and residence of the elector and the name or number of the precinct in which the elector resides.

A verification returned undeliverable shall cause the county clerk to remove the elector's card from the register of electors.

As required by the help America vote act of 2002 (P.L. 107-252), a copy of proper identification will be required prior to issuance of a ballot to anyone who has registered by mail and has not previously voted in an election for federal office in the state. Proper identification consists of:

- (1) A current and valid photo identification; or
- (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. [I.C., § 34-410, as added by 1994, ch. 67, § 7, p. 137; am. 1995, ch. 215, § 4, p. 747; am. 2003, ch. 48, § 4, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 34-410, which comprised 1970, ch. 140, § 45, p. 351; am. 1972, ch. 392, § 3, p. 1131; am. 1982, ch. 137, § 2, p. 388; am. 1984, ch. 131, § 1, p. 305, was repealed by S.L. 1994, ch. 67, § 2, effective January 1, 1995.

Another former § 34-410 was repealed. See Prior Laws, § 34-401.

Federal References. — The national voter registration act of 1993, referred to in the third paragraph, is codified as 42 U.S.C.S. § 1973gg et seq.

The help America vote act of 2002, referred to in the sixth paragraph, is codified as 42 U.S.C.S. § 15301 et seq.

Compiler's Notes. — Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was "to exempt Idaho from compli-

ance with the National Voter Registration Act of 1993, as provided in section 4(b)(2) of that act."

Effective Dates. — Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 8 of S.L. 1994, ch. 67 provided that "An emergency existing therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sections of this act shall be in full force and effect on and after January 1, 1995." Approved March 7, 1994.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

34-410A. Absentee registration for uniformed and overseas citizens. — Whenever provision is made for absentee voting by a statute of the United States, including the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff.), an application for an absentee ballot made under that law may be given the same effect as an application for an absentee ballot made under chapter 10, title 34, Idaho Code. [I.C., § 34-410A, as added by 1995, ch. 215, § 6, p. 747.]

STATUTORY NOTES

Prior Laws. — Former § 34-410A, which comprised I.C., § 34-410A, as added by 1976, ch. 353, § 1, p. 1166; am. 1994, ch. 122, § 1, p. 271, was repealed by S.L. 1995, ch. 215, § 5, effective March 17, 1995.

Compiler's Notes. — The citation enclosed in parentheses so appeared in the law as enacted. The correct citation to the federal act should be 42 U.S.C. § 1973ff et seq.

34-411. Application for registration — Contents. — (1) Each elector who requests registration shall supply the following information under oath or affirmation:

- (a) His full name and sex.
- (b) His mailing address, his residence address or any other necessary information definitely locating his residence.
- (c) The period of time preceding the date of registration during which he has resided in the state.
- (d) Whether or not he is a citizen.
- (e) That he is under no legal disqualifications to vote.
- (f) The county and state where he was previously registered, if any.
- (g) Date of birth.
- (h) Current driver's license number or, in the absence of an Idaho driver's license, the last four (4) digits of the elector's social security number.

(2) Any elector who shall supply any information under subsection (1) of this section, knowing it to be false, is guilty of perjury.

(3) Each elector who requests registration may, at the elector's option, supply the [the] elector's telephone number. If the telephone number is supplied by the elector, the telephone number shall be available to the public. [1970, ch. 140, § 46, p. 351; am. 1971, ch. 192, § 6, p. 874; am. 1972, ch. 392, § 4, p. 1131; am. 1988, ch. 233, § 1, p. 461; am. 1995, ch. 215, § 7, p. 747; am. 2003, ch. 48, § 5, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 34-411, which comprised 1963, ch. 268, § 4, p. 681, was repealed by S.L. 1970, ch. 140, § 205.

Compiler's Notes. — The word "the" in subsection (3) was bracketed by the compiler

as apparent surplusage.

Effective Dates. — Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

JUDICIAL DECISIONS

Cited in: *Cenarrusa v. Peterson*, 95 Idaho 395, 509 P.2d 1316 (1973).

34-411A. Registration by mail when complete reregistration required. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I. C., § 34-411A, as added by 1971,

ch. 192, § 7, p. 874, was repealed by S. L. 1973, ch. 123, § 2, p. 233.

34-412. Qualifications for registration. — (1) The qualifications of any person who requests to be registered shall be determined in the first instance by the registering official from the evidence before him. If the registering official determines that such person is not qualified, he shall refuse to register the person.

(2) A person refused registration under subsection (1) of this section may make application to the county clerk for a hearing on his qualifications. Not more than ten (10) days after the date he receives such application, the county clerk shall hold a hearing on the qualifications of the applicant and shall notify the applicant of the place and time of such hearing. At such hearing the applicant may present evidence as to his qualifications, provided that no hearing shall be held subsequent to any election which is held within said ten (10) day period. If the county clerk determines that the applicant is qualified, the county clerk shall register the applicant immediately upon the conclusion of the hearing. [1970, ch. 140, § 47, p. 351; am. 1982, ch. 216, § 1, p. 590; am. 1995, ch. 215, § 8, p. 747.]

STATUTORY NOTES

Prior Laws. — Former §§ 34-412 — 34-421, which comprised 1963, ch. 268, §§ 5, 6, 10-13, p. 681, were repealed by S.L. 1970, ch. 140, § 205.

34-413. Reregistration of elector who changes residence. — An elector who moves to another county within the state or to another state within thirty (30) days prior to any election shall be permitted to vote in the ensuing election by absentee ballot. [1970, ch. 140, § 48, p. 351; am. 1972, ch. 392, § 5, p. 1131; am. 1977, ch. 15, § 1, p. 32; am. 1982, ch. 137, § 3, p. 388; am. 1983, ch. 213, § 1, p. 590; am. 1995, ch. 215, § 9, p. 747.]

STATUTORY NOTES

Prior Laws. — Former § 34-413 was repealed. See Prior Laws, § 34-412. 1983, ch. 213 declared an emergency. Approved April 13, 1983.

Effective Dates. — Section 11 of S.L.

34-414. Voter’s affidavit of elector who moves within a county.
[Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 34-414, which comprised S.L. 1970, ch. 140, § 49, was repealed by S.L. 1972, ch. 392, § 6. by S.L. 1970, ch. 140, § 205.
Compiler’s Notes. — This section, which comprised I.C., § 34-414, as added by 1989, ch. 69, § 1, p. 110, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.
Another former § 34-414, which comprised S.L. 1963, ch. 268, § 7, p. 681, was repealed

34-415. Certificates of registration. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 34-415, which comprised 1963, ch. 268, § 8, p. 681, was repealed by S.L. 1970, ch. 140, § 205.
Compiler’s Notes. — This section, which

comprised 1970, ch. 140, § 50, p. 351, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.

34-416. Registration cards. — (1) The registration card shall contain the following warning:

WARNING: Any elector who supplies any information, knowing it to be false, is guilty of perjury.

(2) The elector shall read the warning set forth in subsection (1) of this section and shall sign his name in an appropriate place on the completed card.

(3) The registration card completed and signed as provided in this section constitutes the official registration card of the elector. The county clerk shall keep and file all such cards in a convenient manner in his office. Such cards constitute the register of electors and shall be considered confidential and unavailable for public inspection and copying except as provided by subsection (25) of section 9-340C, Idaho Code. [1970, ch. 140, § 51, p. 351; am. 1972, ch. 392, § 7, p. 1131; am. 2001, ch. 99, § 2, p. 248; am. 2003, ch. 48, § 6, p. 181; am. 2004, ch. 163, § 2, p. 529.]

STATUTORY NOTES

Prior Laws. — Former § 34-416 was repealed. See Prior Laws, § 34-412. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Effective Dates. — Section 16 of S.L.

34-417. Changes in boundaries of precinct — Alteration of registration cards. — When changes in the boundaries of any precinct are made, the county clerk shall alter the official registration card of any elector to conform with the change and shall mail a written notice thereof to such elector at his residence address indicated on the altered registration card. [1970, ch. 140, § 52, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-417 was repealed. See Prior Laws, § 34-412.

34-418. Weekly review of new registration cards — Report to interested officials. — Each week the county clerk shall review the registration cards of all newly registered electors for the past weekly period to determine whether they have been previously registered to vote in another state or in another county within this state. The county clerk or secretary of state, through the statewide voter registration system, shall notify the proper registration official or county clerk where the elector was previously registered so that the prior registration may be canceled. The form of such notice shall be prescribed by the secretary of state. [1970, ch. 140, § 53, p. 351; am. 2006, ch. 70, § 2, p. 214.]

STATUTORY NOTES

Prior Laws. — Former § 34-418 was repealed. See Prior Laws, § 34-412.

Amendments. — The 2006 amendment, by ch. 70, substituted “or secretary of state, through the statewide voter registration system, shall notify” for “shall mail a notification of registration to” and inserted “so that the prior registration may be canceled” in the

second sentence, and deleted the former third sentence, which read: “This notice shall explain that the elector has appeared and registered in this county.”

Effective Dates. — Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

34-419. Suspension of registration of electors who appear not to be citizens of the United States. — The county clerk shall remove from the register of electors the official registration card of any elector who appears by the registration records in the office of the county clerk not to be a citizen of the United States and shall suspend the registration of such elector. The county clerk shall mail a written notice of such removal and suspension to the elector at his residence address indicated on the card. If the elector proves to the county clerk that he is in fact a citizen of the United States, his card shall be replaced in the register and his registration reinstated. [1970, ch. 140, § 54, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-419 was repealed. See Prior Laws, § 34-412.

34-420. No elector’s registration shall be canceled while he is serving in the armed forces — Exception. — (1) Except as provided in section 34-435, Idaho Code, no elector’s registration shall be canceled, nor shall he be deprived of his right to vote at any election by reason of the removal of his official registration card from the register of electors, during any period that he is serving in the armed forces of the United States or of any ally of the United States.

(2) In order to facilitate the implementation of the provisions of subsection (1) of this section, the one hundred twenty (120) day limitation in section 34-435, Idaho Code, shall be waived for the year 1987, in order to allow military registrations to be cancelled by the county clerk in calendar year 1987. [1970, ch. 140, § 55, p. 351; am. 1987, ch. 20, § 1, p. 27.]

STATUTORY NOTES

Prior Laws. — Former § 34-420 was repealed. See Prior Laws, § 34-412.

34-421. Reregistration — When required. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 34-421, which comprised S.L. 1963, ch. 268, § 15, p. 681, was repealed by S.L. 1970, ch. 140, § 205.

Compiler’s Notes. — This section, which

comprised 1970, ch. 140, § 56, p. 351; am. 1977, ch. 15, § 2, p. 32; am. 1981, ch. 255, § 1, p. 545, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.

34-422. Transfer of registration. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1970, ch. 140, § 57, p. 351 was repealed by S.L. 1981, ch. 255, § 2.

34-423. Change of name — Voting. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1970, ch. 140, § 58, p. 351; am. 1981, ch. 255, § 3, p. 545, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.

34-424 — 34-430. Special registration of persons with less than six months residency. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised S.L. 1970, ch. 140, §§ 59-65, p. 351, were repealed by S.L. 1973, ch. 123, §§ 3-9, p. 233.

34-431. Challenges of entries in election register. — At the time of any election, any registered elector may challenge the entry of an elector's name as it appears in the election register. Such a challenge will be noted in the remarks column following the elector's name stating the reason, such as "died," "moved," or "incorrect address." The individual making the challenge shall sign his name following the entry. [1970, ch. 140, § 66, p. 351.]

34-432. Correction of election register from challenges at election. — (1) Within sixty (60) days after each election, the county clerk shall examine the election register and note the challenges as described in section 34-431, Idaho Code. The county clerk shall mail a written inquiry to the challenged elector at his mailing address as indicated on his registration card. Such inquiry shall state the nature of the challenge and provide a suitable form for reply.

(2) Within twenty (20) days from date of mailing of the written inquiry the elector may, in person or in writing, state that the information on his registration card is correct. Upon receipt of such a statement or request the county clerk shall determine whether the information satisfies the challenge. If the county clerk determines that the challenge has not been satisfied, the county clerk shall schedule a hearing on the challenge and shall notify the elector of the place and time of the hearing. The hearing shall be held no later than twenty (20) days after notice is given. At the hearing, the challenged elector may present evidence of qualification. If the county clerk, upon the conclusion of the hearing, determines that the challenged elector's registration is not valid, the county clerk shall cancel the registration. If a challenged elector fails to make the statement or

request in response to the inquiry, the county clerk shall cancel the registration.

(3) The county clerk may make inquiry into the validity of any registration at any time. The inquiry shall proceed as provided in this section. [1970, ch. 140, § 67, p. 351; am. 1982, ch. 137, § 4, p. 388; am. 1989, ch. 146, § 1, p. 353; am. 2006, ch. 70, § 3, p. 214.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 70, deleted “or he may request a change in the information on his registration card” at the end of first sentence in subsection (2).

Effective Dates. — Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

34-433. Monthly correction of election register from reported deaths. — The state board of health [and welfare] shall, on or about the 25th day of each month, furnish to the secretary of state a listing showing the name, age, county of residence and residence address of each Idaho resident who has died during the preceding month. The secretary of state shall sort this list by county and furnish a copy of same to each county clerk. Each county clerk shall immediately cancel all registrations of individuals reported as deceased by the state board of health [and welfare] in the board’s report to the secretary of state. [1970, ch. 140, § 68, p. 351.]

34-434. Retention of notices and correspondence relating to correction of election registers. — Copies of all notices and other correspondence issued pursuant to the directives contained in sections 67 and 68 of this act [sections 34-432, 34-433] shall be retained by the county clerk for a period of two (2) years from date of mailing. [1970, ch. 140, § 69, p. 351.]

STATUTORY NOTES

Compiler’s Notes. — The bracketed section numbers “34-432, 34-433” were inserted by the compiler.

34-435. Cancellation of registrations following any general election of those not voting for four years. — Within one hundred and twenty (120) days following the date of the general election in 1978 and every general election thereafter, the county clerk shall examine the election register and the signed statements of challenge made at that election. After this examination, the county clerk shall immediately cancel the registration of any elector who did not vote at any primary or general election in the past four (4) years.

This section shall be construed as to provide for a uniform four (4) year registration period for all electors. [1970, ch. 140, § 70, p. 351; am. 1975, ch. 124, § 1, p. 257; am. 1977, ch. 15, § 3, p. 32; am. 1978, ch. 27, § 1, p. 53; am. 1995, ch. 215, § 11, p. 747.]

STATUTORY NOTES

Effective Dates. — Section 16 of S.L. 1995, ch. 215 declared an emergency. Approved March 17, 1995.

34-436. Retention of correspondence relating to cancellation of voter's registration. — All correspondence relating to the cancellation of an elector's registration shall be preserved by the county clerk for a period of two (2) years following the time of any general election. [1970, ch. 140, § 71, p. 351.]

34-437. Furnishing lists of registered electors — Restrictions. — (1) Each of the county clerks, upon receiving a request shall supply to any individual, a current list of the registered electors of the county and their addresses, arranged in groups according to election precincts. The county clerks shall prepare an original of the above list from the state voter registration system at county expense. Any person desiring a copy of the original list shall be furnished the same, and the county clerk shall assess the individual an amount which will compensate the county for the cost of reproducing such copy.

(2) No person to whom a list of registered electors is made available or supplied under subsection (1) of this section and no person who acquires a list of registered electors prepared from such list shall use any information contained therein for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose. [1970, ch. 140, § 72, p. 351; am. 1972, ch. 392, § 8, p. 1131; am. 1973, ch. 304, § 5, p. 646; am. 1976, ch. 344, § 1, p. 1147; am. 1982, ch. 137, § 5, p. 388; am. 2003, ch. 48, § 7, p. 181.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 1972, ch. 392 declared an emergency. Approved April 3, 1972.

Section 7 of S.L. 1982, ch. 137 declared an

emergency. Approved March 22, 1982.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

34-437A. Statewide list of registered electors. — (1) The secretary of state, in conjunction with county clerks, shall develop and implement a single, uniform official, centralized, interactive, computerized statewide voter registration system as required by the help America vote act of 2002 (P.L. 107-252).

(2) The statewide system shall contain the name and registration information of every legally registered voter in the state and assign a unique identifier to each legally registered voter in the state, and include the following:

(a) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(b) The computerized list shall contain the name and registration information of every legally registered voter in the state.

(c) Under the computerized list, a unique identifier shall be assigned to each legally registered voter in the state.

(d) The computerized list shall be coordinated with other agency databases within the state.

(e) Any election official in the state, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(f) All voter registration information obtained by any local election official in the state shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(g) The secretary of state shall provide such support as may be required so that local election officials are able to enter information as described in subsection (2)(f) of this section.

(h) The computerized list shall serve as the official voter registration list for the conduct of all elections for federal office in the state.

(3) Any person desiring a copy of the statewide list of registered electors shall be furnished the same, and the secretary of state shall assess the individual an amount which will compensate the state for the cost of reproducing such copy.

No person to whom a list of statewide electors is furnished and no person who acquires a list of statewide electors prepared from such list shall use any information contained therein for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose. [I.C., § 34-437A, as added by 1976, ch. 344, § 2, p. 1147; am. 2003, ch. 48, § 8, p. 181.]

STATUTORY NOTES

Federal References. — The help America vote act of 2002, referred to in subsection (1), is codified as 42 U.S.C.S. § 15301 et seq.

Effective Dates. — Although the governor signed S.L. 1976, Chapter 344 on April 1,

1976, the attorney general ruled that this bill became law without the governor's signature on March 31, 1976.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

34-437B. Furnishing lists of registered electors to school districts. — Each of the county clerks, upon receiving a request therefor, not later than the thirtieth day prior to a school election, shall, not later than the seventh day prior to the election, supply to a requesting school board a list of registered electors, that are within the school district within which a school district election is to be held. The county clerk may assess the school board an amount which will compensate the county for the cost of preparing such a list. [I.C., § 34-437B, as added by 1987, ch. 256, § 3, p. 519; am. 1988, ch. 71, § 1, p. 101; am. 2006, ch. 70, § 4, p. 214.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 70, deleted “by precinct” following “registered electors.”

Effective Dates. — Section 5 of S.L. 1987, ch. 256 (approved April 1, 1987 at 9:45 AM) declared an emergency. However, such section was repealed by § 1 of S.L. 1987, ch. 252

(approved and effective April 1, 1987 at 2:50 PM).

Section 2 of S.L. 1988, ch. 71 declared an emergency. Approved March 22, 1988.

Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

34-438. Data-processing systems — Use for voter registration. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1970, ch. 140, § 73, p. 351,

was repealed by S.L. 2003, ch. 48, § 9, effective March 13, 2003.

34-439. Disclosures in elections to authorize bonded indebtedness. — Notwithstanding any other provision of law, any taxing district which proposes to submit any question to the electors of the district that would authorize any bonded indebtedness shall provide a brief official statement setting forth in simple, understandable language, information on the proposal substantially as follows:

(1) The total existing indebtedness, including interest accrued, of the taxing district;

(2) The interest rate which is anticipated on the proposed bond issue, the range of anticipated rates, and the maximum rate if a maximum is specified in the submission of the question; and

(3) The total amount to be repaid over the life of the bond issue based on the anticipated interest rate, if the bond election is approved.

The verified, official district's statement shall be made a part of the official ballot and be included in the official notice of the election. [I.C., § 34-440, as added by 1983, ch. 103, § 1, p. 222; am. 1984, ch. 107, § 1, p. 249; am. 1987, ch. 19, § 1, p. 26; am. and redesisg. 2005, ch. 25, § 58, p. 82.]

STATUTORY NOTES

Compiler's Notes. — This section was enacted as § 34-440 by S.L. 1983, ch. 103. The section was redesignated as § 34-439 as

the chapter contained no other § 34-439. The redesignation was made permanent by S.L. 2005, ch. 25.

CHAPTER 5

POLITICAL PARTIES — ORGANIZATION

SECTION.

34-501. “Political party” defined — Procedures for creation of a political party.

34-502. County central committee — Members — Officers — Duties of chairman — Notice to chairman.

SECTION.

34-503. Legislative district central committee — Membership — Officers.

34-504. State central committee — Membership.

34-504A. [Repealed.]

34-505. Powers and duties of county central committee.

SECTION.

34-506. Powers and duties of legislative district central committee.

SECTION.

34-507. Selection of delegates to the state convention.

34-501. "Political party" defined — Procedures for creation of a political party. — (1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast for governor or for presidential electors.

(c) By an affiliation of electors who shall have signed a petition which shall:

(A) State the name of the proposed party in not more than six (6) words;

(B) State that the subscribers thereto desire to place the proposed party on the ballot;

(C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;

(D) Be filed with the secretary of state on or before August 30 of even numbered years;

(E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;

(F) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law. [I.C., § 34-501, as added by 1978, ch. 256, § 2, p. 560; am. 1985, ch. 42, § 1, p. 87; am. 1987, ch. 262, § 1, p. 553.]

STATUTORY NOTES

Cross References. — Presidential preference primary, §§ 34-731 — 34-740.

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 206, p. 351:

34-501. (1890-1891, p. 57, § 37; reen. 1899, p. 33, § 28; reen. R.C. & C.L., § 364; C.S., § 509; I.C.A., § 33-501.)

34-502. (1890-1891, p. 57, § 38; reen. 1899, p. 33, § 29; reen. R.C., § 365; am. 1911, ch. 178, § 11, p. 581; am. 1913, ch. 85, § 16, p. 359; reen. C.L., § 365; C.S., § 510; I.C.A., § 33-502; am. 1966 (3rd E.S.), ch. 5, § 1, p. 16.)

34-503. (1890-1891, p. 57, § 51; reen. 1899, p. 33, §§ 42, 43; am. 1905, p. 317, § 1; compiled and reen. R.C. & C.L., § 366; C.S., § 511; I.C.A., § 33-503; am. 1944 (1st E.S.), ch. 2, § 1, p. 4; am. 1949, ch. 86, § 1, p. 149; am. 1951, ch. 113, § 1, p. 264; am. 1966 (3rd E.S.), ch. 5, § 2, p. 16.)

34-504. (1890-1891, p. 57, §§ 49, 50; reen. 1899, p. 33, §§ 40, 41; reen. R.C., § 367; am. 1913, ch. 24, p. 93; compiled and reen. C.L., § 367; C.S., § 512; I.C.A., § 33-504; am. 1944 (1st E.S.), ch. 2, § 2, p. 4; am. 1951, ch. 77, § 1, p. 145; am. 1953, ch. 233, § 1, p. 348; am. 1957, ch. 219, § 1, p. 497; am. 1963, ch. 358, § 1, p. 1026; am. 1966 (3rd E.S.), ch. 5, § 3, p. 16.)

34-504A. (I.C., § 34-504A, as added by 1966 (3rd E.S.), ch. 5, § 4, p. 16.)

34-505. (1890-1891, p. 57, §§ 71, 72; reen. 1899, p. 33, §§ 62, 63; am. R.C., § 368; am. 1913, ch. 24, p. 93; reen. C.L., § 368; C.S., § 513; I.C.A., § 33-505.)

34-506. (1890-1891, p. 57, § 76; reen. 1899, p. 33, § 67; am. R.C., § 369; am. 1913, ch. 24, p. 93; reen. C.L., § 369; C.S., § 514; I.C.A., § 33-506.)

34-507. (1890-1891, p. 57, § 66; reen. 1899, p. 33, § 57; reen. R.C. & C.L., § 370; C.S., § 515; I.C.A., § 33-507; am. 1933, ch. 10, § 1, p. 12; am. 1937, ch. 29, § 1, p. 41; am. 1949, ch. 131, § 1, p. 234; am. 1957, ch. 219, § 1, p. 497; am. 1959, ch. 126, § 1, p. 271.)

Another former § 34-501, which comprised S.L. 1970, ch. 140, § 74, p. 351; am. 1971, ch. 130, § 1, p. 511; am. 1976, ch. 344, § 3, p. 1147, was repealed by S.L. 1978, ch. 256, § 1.

Compiler's Notes. — The words "this act", in the introductory paragraph in (1) and in the first paragraph of (2), appear in S.L. 1978, Chapter 256, which is codified as this section only.

Effective Dates. — Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

DECISIONS UNDER PRIOR LAW

Constitutionality.

Former section defining "political parties" was unconstitutional insofar as it had the effect of prohibiting the formation of new parties and, thereby, interfered with the ex-

ercise of suffrage by citizens belonging to new parties, in violation of Const., Art. I, § 19. American Indep. Party in Idaho, Inc. v. Cenarrusa, 92 Idaho 356, 442 P.2d 766 (1968).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes governing "minor political parties". 120 A.L.R.5th 1.

34-502. County central committee — Members — Officers — Duties of chairman — Notice to chairman. — The county central committee of each political party in each county shall consist of the precinct committeemen representing the precincts within the county and the county chairman elected by the precinct committeemen. The precinct committeemen within each county shall meet at the county seat within ten (10) days after the primary election and at the time and date designated by the incumbent county chairman, and shall organize by electing a chairman, vice

chairman, a secretary, a state committeeman, a state committeewoman, and such other officers as they may desire who shall hold office at the pleasure of the county central committee or until their successors are elected.

Unless state party rules, adopted as provided in section 34-505, Idaho Code, provide otherwise, when a vacancy exists in the office of county central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the county, and the precinct committeemen shall proceed to elect a chairman of the county central committee for the balance of the unexpired term.

The county central committee shall fill by appointment all vacancies that occur or exist in the office of precinct committeeman who shall be a qualified elector of the precinct.

The county clerk shall deliver in writing to the chairman of the county central committee of each political party on or before January 20 of each year in which a general election is to be held, a list of the election precincts in the county and the names and addresses of the precinct committeemen who were elected at the last primary election, or who have since been appointed as precinct committeemen, as such election or appointment is shown on the records of the county clerk. If the county clerk has no record of precinct committeemen, he shall in writing, so inform the chairman of the county central committee.

The chairman of the county central committee shall on or before February 1 of each year in which a general election is to be held, and at such other times as changes occur, certify to the county clerk the names and addresses of the precinct committeemen of his political party. Immediately upon receipt of certification, the county clerk shall deliver in writing to each precinct committeeman a notice of the provisions of subsection (1) of section 34-406, Idaho Code. [1970, ch. 140, § 75, p. 351; am. 1975, ch. 21, § 2, p. 30; am. 1976, ch. 351, § 1, p. 1160.]

STATUTORY NOTES

Prior Laws. — Former § 34-502 was repealed. See Prior Laws, § 34-501.

Compiler's Notes. — The reference, in the last paragraph, to subsection (1) of section

34-406, Idaho Code, and the delivery of a notice provided thereby, are to a version of § 34-406 that was repealed by S.L. 1994, ch. 67, § 2.

JUDICIAL DECISIONS

Cited in: *Marchioro v. Chaney*, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 (1979).

34-503. Legislative district central committee — Membership — Officers. — The legislative district central committee of each political party in each legislative district shall consist of the precinct committeemen representing the precincts within the legislative district, and the legislative district chairman elected by the precinct committeemen. The precinct committeemen within each legislative district shall meet within the legislative district or at a convenient location in a legislative district contiguous to the legislative district, or at a convenient location in a county in which

any portion of the legislative district sits, within eleven (11) days after the primary election, the meeting time and place to be designated by the incumbent legislative district chairman. At this meeting the precinct committeemen shall organize by electing a chairman, vice chairman, a secretary and such other officers as they may desire, who shall hold office at the pleasure of the legislative district central committee or until their successors are elected.

Unless state party rules, adopted as provided in section 34-506, Idaho Code, provide otherwise, when a vacancy exists in the office of legislative district central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the legislative district, and the precinct committeemen shall proceed to elect a chairman of the legislative district central committee for the balance of the unexpired term. [1970, ch. 140, § 76, p. 351; am. 1976, ch. 351, § 2, p. 1160; am. 2006, ch. 397, § 1, p. 1222.]

STATUTORY NOTES

Prior Laws. — Former § 34-503 was repealed. See Prior Laws, § 34-501.

Amendments. — The 2006 amendment, by ch. 397, in the first paragraph, inserted “or at a convenient location in a legislative district contiguous to the legislative district, or at a convenient location in a county in which any portion of the legislative district sits.”

Effective Dates. — Although the governor signed S.L. 1976, Chapter 344 on April 1, 1976, the attorney general ruled that this bill became law without the governor's signature on March 31, 1976.

Section 2 of S.L. 2006, ch. 397 declared an emergency. Approved April 7, 2006.

34-504. State central committee — Membership. — The state central committee of each political party shall consist of all legislative district chairmen, all county central committee chairmen, all state committeemen, and state committeewomen selected by the county central committees. Each of the above members of the state central committee shall be entitled to vote at all meetings of the state central committee. [1970, ch. 140, § 77, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-504 was repealed. See Prior Laws, § 34-501.

JUDICIAL DECISIONS

Cited in: Marchioro v. Chaney, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 (1979).

34-504A. Challengers and poll watchers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 34-504A, as added by 1966

(3rd E.S.), ch. 5, § 4, p. 16, was repealed by S.L. 1970, ch. 140, § 206, p. 351.

34-505. Powers and duties of county central committee. — The county central committee shall have all the powers and duties prescribed by state law and rules and regulations promulgated and adopted by the state conventions or the state central committee. [1970, ch. 140, § 78, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-505 was repealed. See Prior Laws, § 34-501.

34-506. Powers and duties of legislative district central committee. — The legislative district central committee shall have all the powers and duties prescribed by state law and rules and regulations promulgated and adopted by the state conventions or the state central committee. [1970, ch. 140, § 79, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-506 was repealed. See Prior Laws, § 34-501.

34-507. Selection of delegates to the state convention. — The delegates to the state convention of each political party shall be selected in the manner prescribed by rules and regulations promulgated and adopted by the state central committee. [I.C., § 34-507, as added by 1971 (E.S.), ch. 9, § 2, p. 14.]

STATUTORY NOTES

Prior Laws. — A* former § 34-507 was repealed by S.L. 1970, ch. 140, § 206 (see Prior Laws, § 34-501); section 80 of that act created a new § 34-507. This subsequent section, which comprised S.L. 1970, ch. 140, § 80; 1971, ch. 148, § 1, was repealed by S.L. 1971 (E.S.), ch. 9, § 1.

CHAPTER 6

TIME OF ELECTIONS — OFFICERS ELECTED

| SECTION. | SECTION. |
|--|--|
| 34-601. Dates on which elections shall be held. | 34-607. Election of governor — Qualifications. |
| 34-602. Publication of notices for primary, general or special elections — Contents. | 34-608. Election of lieutenant governor — Qualifications. |
| 34-603. Certification of a proposed constitution, constitutional amendment or other question to be submitted to the people for vote. | 34-609. Election of secretary of state — Qualifications. |
| 34-604. Election of United States senator — Qualifications. | 34-610. Election of state controller — Qualifications. |
| 34-605. Election of United States congressional representatives — Qualifications. | 34-611. Election of state treasurer — Qualifications. |
| 34-606. Election of presidential electors. | 34-612. Election of attorney general — Qualifications. |
| | 34-612A — 34-612D. [Repealed.] |
| | 34-613. Election of superintendent of public instruction — Qualifications. |

SECTION.

- 34-614. Election of state representatives and senators — Qualifications.
- 34-614A. Candidates for state legislature.
- 34-615. Election of justices of the Supreme Court — Qualifications.
- 34-616. Election of district judges — Qualifications.
- 34-617. Election of county commissioners — Qualifications.
- 34-618. Election of county sheriffs — Qualifications.
- 34-619. Election of clerks of district courts — Qualifications.
- 34-620. Election of county treasurers — Qualifications.
- 34-621. Election of county assessors — Qualifications.
- 34-622. Election of county coroners — Qualifications.

SECTION.

- 34-623. Election of county prosecuting attorneys — Qualifications.
- 34-624. Election of precinct committeemen — Qualifications.
- 34-624A. Alternative to precinct committeeman — Precinct committeeman and voters' delegate to the party's county and district conventions.
- 34-625. Election of highway district commissioners in single countywide districts — Qualifications.
- 34-625A. Election of highway district commissioners in certain single countywide districts — Qualifications.
- 34-626. Petition in lieu of filing fee.
- 34-627. Holders of partisan elective office changing political parties.
- 34-627A — 34-651. [Repealed.]

34-601. Dates on which elections shall be held. — Elections shall be held in this state on the following dates or times:

- (1) A primary election shall be held on the fourth Tuesday in May, 1980, and every two (2) years thereafter on the above-mentioned Tuesday.
- (2) A general election shall be held on the first Tuesday after the first Monday of November, 1972, and every two (2) years thereafter on the above-mentioned Tuesday.
- (3) Special state elections shall be held on the dates ordered by the governor's proclamation, or as otherwise provided by law.
- (4) A presidential primary shall be held in conjunction with the primary election, on the fourth Tuesday in May, 1980, and every four (4) years thereafter on the above-mentioned Tuesday. [1970, ch. 140, § 81, p. 351; am. 1971, ch. 193, § 1, p. 879; am. 1975, ch. 174, § 12, p. 469; am. 1979, ch. 309, § 2, p. 833.]

STATUTORY NOTES

Prior Laws. — Former § 34-601, which comprised 1931, ch. 18, § 1, p. 29; I.C.A., § 33-601, was repealed by S.L. 1970, ch. 140, § 207.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Filling of vacancies.
Officeholder — eligibility.

Filling of Vacancies.

It is the general policy of the law that vacancies in elective offices should be filled at

an election as quickly as practicable after the vacancy occurs. Winter v. Davis, 65 Idaho 696, 152 P.2d 249 (1944).

Officeholder — Eligibility.

One ineligible for office at the time of election because of holding another office, the term of which will expire before the beginning of the term of the office for which he is a

candidate, was not by his tenure of the office he holds rendered ineligible to be a candidate for the office he seeks. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

34-602. Publication of notices for primary, general or special elections — Contents. — The several county clerks shall publish at least two (2) times, the notices for any primary, general or special election. The notice shall state the date of the election, the polling place in each precinct and the hours during which the polls shall be open for the purpose of voting, and information about the accessibility of the polling places.

The first notice shall be published at least twelve (12) days prior to any election and the second notice shall be published not later than five (5) days prior to the election. The notice of election shall be published in at least two (2) newspapers published within the county, but if this is not possible, the notice shall be published in one (1) newspaper published within the county or a newspaper which has general circulation within the county. [1970, ch. 140, § 82, p. 351; am. 2004, ch. 112, § 1, p. 385.]

STATUTORY NOTES

Prior Laws. — Former, § 34-602, which § 33-602, was repealed by S.L. 1970, ch. 140, comprised 1931, ch. 18, § 2, p. 29; I.C.A., § 207.

34-603. Certification of a proposed constitution, constitutional amendment or other question to be submitted to the people for vote.

— Whenever a proposed constitution, constitutional amendment or other question is to be submitted to the people of the state for popular vote, it shall be certified by the secretary of state to the county clerks not later than September 7 in the year in which it will be voted upon. It shall be published in the form prescribed by the secretary of state. [1970, ch. 140, § 83, p. 351; am. 1973, ch. 304, § 6, p. 646; am. 1984, ch. 131, § 2, p. 305; am. 1985, ch. 42, § 2, p. 87.]

STATUTORY NOTES

Prior Laws. — Former § 34-603, which comprised I.C.A., § 33-602-A, as added by 1933, ch. 185, § 12, p. 341, was repealed by S.L. 1963, ch. 93, § 11, p. 291.

ch. 131 declared an emergency. Approved March 31, 1984.

Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

Effective Dates. — Section 7 of S.L. 1984,

34-604. Election of United States senator — Qualifications. —

(1) At the general election, 1972, and every six (6) years thereafter, there shall be elected one (1) United States senator. At the general election, 1974, and every six (6) years thereafter, there shall be elected one (1) United States senator.

(2) No person shall be elected to the office of United States senator unless he has attained the age of thirty (30) years at the time of his election, has

been a citizen of the United States at least nine (9) years and shall reside within the state at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of five hundred dollars (\$500) which shall be deposited in the general fund. [1970, ch. 140, § 84, p. 351; am. 1996, ch. 28, § 1, p. 67.]

STATUTORY NOTES

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 207:

34-604. (1931, ch. 18, § 3, p. 29; I.C.A., § 33-603; am. 1933, ch. 185, § 1, p. 341; am. 1944 (1st E.S.), ch. 2, § 3, p. 4; am. 1947, ch. 5, § 1, p. 7; am. 1959, ch. 146, § 1, p. 331; am. 1963, ch. 93, § 1, p. 291.)

34-605. (1931, ch. 18, § 4, p. 29; I.C.A., § 33-604; am. 1965 (E.S.), ch. 1, § 1, p. 5; am. 1966 (3rd E.S.), ch. 5, § 5, p. 16.)

34-606. (1931, ch. 18, § 5, p. 29; I.C.A., § 33-605; am. 1933, ch. 185, § 2, p. 341; am. 1937, ch. 42, § 1, p. 53; am. 1944 (1st E.S.), ch. 2, § 4, p. 4; am. 1949, ch. 86, § 4, p. 149; am. 1953, ch. 196, § 1, p. 304; am. 1955, ch. 242, § 1, p. 542; am. 1959, ch. 146, § 2, p. 331; am. 1963, ch. 93, § 2, p. 291; am. 1965, ch. 261, § 1, p. 660; am. 1965, (E.S.), ch. 1, § 2, p. 5; am. 1966 (3rd E.S.), ch. 5, § 6, p. 16; am. 1967, ch. 360, § 1, p. 1011.)

34-607. (1931, ch. 18, § 6, p. 29; I.C.A., § 33-606; am. 1935, ch. 123, § 1, p. 287; am.

1959, ch. 125, § 1, p. 270.)

34-608. (1931, ch. 18, § 7, p. 29; I.C.A., § 33-607; am. 1933, ch. 185, § 3, p. 341; am. 1937, ch. 42, § 2, p. 53; am. 1965 (E.S.), ch. 1, § 3, p. 5; am. 1966 (3rd E.S.), ch. 5, § 7, p. 16.)

34-609. (1931, ch. 18, § 8, p. 29; I.C.A., § 33-608; am. 1966 (3rd E.S.), ch. 5, § 8, p. 16.)

34-610. (1931, ch. 18, § 9, p. 29; I.C.A., § 33-609; am. 1963, ch. 93, § 3, p. 291.)

34-611. (1931, ch. 18, § 10, p. 29; I.C.A., § 33-610; am. 1963, ch. 93, § 4, p. 291.)

34-612. (1931, ch. 18, § 11, p. 29; I.C.A., § 33-611; am. 1933, ch. 185, § 4, p. 341; am. 1937, ch. 54, § 1, p. 69; am. 1951, ch. 253, § 1, p. 550; am. 1959, ch. 146, § 3, p. 331; am. 1963, ch. 93, § 5, p. 291; am. 1966 (3rd E.S.), ch. 5, § 9, p. 16; am. 1967, ch. 360, § 2, p. 1011.)

34-613. (1931, ch. 18, § 12, p. 29; I.C.A., § 33-612.)

34-614. (1931, ch. 18, § 13, p. 29; I.C.A., § 33-613; am. 1939, ch. 104, § 1, p. 172.)

34-605. Election of United States congressional representatives — Qualifications. — (1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each United States congressional district a member of the United States house of representatives and any additional number of representatives to which the state may be entitled in the state at large.

(2) No person shall be elected to the house of representatives unless he has attained the age of twenty-five (25) years at the time of his election, has been a citizen of the United States at least seven (7) years and shall reside within the state at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund. [1970, ch. 140, § 85, p. 351; am. 1983, ch. 213, § 2, p. 590; am. 1996, ch. 28, § 2, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-605 was repealed. See Prior Laws, § 34-604.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-606. Election of presidential electors. — (1) At the general election, 1972, and every four (4) years thereafter, there shall be elected such a number of electors of president and vice president of the United States as the state may be entitled to in the electoral college.

(2) No person shall be elected to this position unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Such electors shall be certified to the secretary of state as provided for by law. [1970, ch. 140, § 86, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-606 was repealed. See Prior Laws, § 34-604.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-607. Election of governor — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a governor shall be elected.

(2) No person shall be elected to the office of governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund. [1970, ch. 140, § 87, p. 351; am. 1996, ch. 28, § 3, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-607 was repealed. See Prior Laws, § 34-604.

JUDICIAL DECISIONS

Cited in: Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982).

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-608. Election of lieutenant governor — Qualifications. —

(1) At the general election, 1974, and every four (4) years thereafter, there shall be elected a lieutenant governor.

(2) No person shall be elected to the office of lieutenant governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. [1970, ch. 140, § 88, p. 351; am. 1996, ch. 28, § 4, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-608 was repealed. See Prior Laws, § 34-604.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-609. Election of secretary of state — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a secretary of state shall be elected.

(2) No person shall be elected to the office of secretary of state unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. [1970, ch. 140, § 89, p. 351; am. 1996, ch. 28, § 5, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-609 was repealed. See Prior Laws, § 34-604.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-610. Election of state controller — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a state controller shall be elected.

(2) No person shall be elected to the office of state controller unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. [1970, ch. 140, § 90, p. 351; am. 1994, ch. 181, § 1, p. 575; am. 1996, ch. 28, § 6, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-610 was repealed. See Prior Laws, § 34-604.

Effective Dates. — Section 44 of S.L. 1994, ch. 181 provided: "(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

"(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994

to change the name of the state auditor to state controller.

"If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act." Since such amendment was adopted, the amendment to this section by § 1 of S.L. 1994, ch. 181 became effective January 2, 1995.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of

governmental unit for specified period. 65 A.L.R.3d 1048.

34-611. Election of state treasurer — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a state treasurer shall be elected.

(2) No person shall be elected to the office of state treasurer unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. [1970, ch. 140, § 91, p. 351; am. 1996, ch. 28, § 7, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-611 was repealed. See Prior Laws, § 34-604.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-612. Election of attorney general — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, an attorney general shall be elected.

(2) No person shall be elected to the office of attorney general unless he shall have attained the age of thirty (30) years at the time of his election, is admitted to the practice of law within the state, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. [1970, ch. 140, § 92, p. 351; am. 1996, ch. 28, § 8, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-612 was repealed. See Prior Laws, § 34-604.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-612A — 34-612D. Certification of candidates — State, county assemblies — Independent candidates — Unendorsed political party candidates. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 1970, ch. 140, § 207:

34-612A. (I.C., § 34-612A, as added by 1963, ch. 93, § 6, p. 291; am. 1965 (E.S.), ch. 1, § 4, p. 5; am. 1966 (3rd E.S.), ch. 5, § 10, p. 16.)

34-612B. (I.C., § 34-612B, as added by 1963, ch. 93, § 7, p. 291; am. 1966 (3rd E.S.),

ch. 5, § 11, p. 16; am. 1967, ch. 360, § 3, p. 1011.)

34-612C. (Repealed and reen., I.C. § 34-612C, 1967, ch. 360, § 12, p. 1011.)

34-612D. (I.C., § 34-612D, as added by 1963, ch. 93, § 9, p. 291; am. 1966 (3rd E.S.), ch. 5, § 12, p. 16; am. 1967, ch. 360, § 4, p. 1011.)

34-613. Election of superintendent of public instruction — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a superintendent of public instruction shall be elected.

(2) No person shall be elected to the office of superintendent of public instruction unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States, has a bachelor's degree from an accredited college or university, and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. [1970, ch. 140, § 93, p. 351; am. 1974, ch. 182, § 1, p. 1478; am. 1994, ch. 277, § 1, p. 864; am. 1996, ch. 28, § 9, p. 67.]

STATUTORY NOTES

Cross References. — State superintendent of public instruction, § 67-1501 et seq.

Prior Laws. — Former § 64-613 was repealed. See Prior Laws, § 34-604.

Effective Dates. — Section 3 of S.L. 1974, ch. 182, declared an emergency. Approved April 2, 1974.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-614. Election of state representatives and senators — Qualifications. — (1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each legislative district such representatives and senators as they may be severally entitled.

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of thirty dollars (\$30.00) which shall be deposited in the general fund. [1970, ch. 140, § 94, p. 351; am. 1981 (Ex. Sess.), ch. 2, § 1, p. 5; am. 1996, ch. 28, § 10, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-614 was repealed. See Prior Laws, § 34-604.

(Ex. Sess.), ch. 2 declared an emergency. Approved July 30, 1981.

Effective Dates. — Section 2 of S.L. 1981

JUDICIAL DECISIONS

Cited in: Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982).

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of

governmental unit for specified period. 65 A.L.R.3d 1048.

34-614A. Candidates for state legislature. — (1) A candidate for the office of state senator in a multi-member legislative district, and all candidates for the office of representative shall declare, in their declarations of candidacy, the specific seat or position that they seek.

(2) The secretary of state shall designate positions by using the terms "Position A", "Position B", and continuing in such fashion until all seats or positions in each district are properly labeled. The positions in each district shall be separately and distinctly placed on the primary and general election ballots, and for each position to be filled the ballot shall state "Vote for one".

(3) The candidate receiving the greatest number of votes for the position he seeks shall be declared nominated, or elected, as the case may be. [I.C., § 34-614A, as added by 1984, ch. 121, § 2, p. 278.]

STATUTORY NOTES

Prior Laws. — Former § 34-614A, which comprised I.C., § 34-614A, as added by 1975, ch. 230, § 1, p. 633, was repealed by S.L. 1984, ch. 121, § 1, effective March 30, 1984.

Effective Dates. — Section 3 of S.L. 1984, ch. 121 declared an emergency. Approved March 30, 1984.

34-615. Election of justices of the Supreme Court — Qualifications. — (1) At the primary election, 1972, and every alternate year thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected justices of the Supreme Court to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) No person shall be elected to the office of justice of the Supreme Court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and has resided within this state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund. [1970, ch. 140, § 95, p. 351; am. 1972, ch. 46, § 1, p. 84; am. 1985, ch. 29, § 6, p. 52; am. 1996, ch. 28, § 11, p. 67.]

STATUTORY NOTES

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 207:

34-615. (1931, ch. 18, § 14, p. 29; I.C.A., § 33-614.)

34-616. (1931, ch. 18, § 15, p. 29; I.C.A., § 33-615; am. 1933, ch. 185, § 5, p. 341.)

34-617. (1931, ch. 18, § 16, p. 29; I.C.A., § 33-616; am. 1933, ch. 185, § 6, p. 341; am. 1949, ch. 131, § 2, p. 234.)

34-618. (1931, ch. 18, § 17, p. 29; I.C.A., § 33-617.)

34-619. (1931, ch. 18, § 1, p. 29; I.C.A., § 33-618; am. 1959, ch. 146, § 4, p. 331; am. 1966 (3rd E.S.), ch. 5, § 13, p. 16.)

34-620. (1931, ch. 18, § 19, p. 29; I.C.A., § 33-619; am. 1959, ch. 146, § 5, p. 331; am. 1966 (3rd E.S.), ch. 5, § 14, p. 16.)

34-621. (1931, ch. 18, § 20, p. 29; I.C.A., § 33-620.)

34-622. (1931, ch. 18, § 21, p. 29; I.C.A., § 33-621.)

34-623. (1931, ch. 18, § 22, p. 29; I.C.A., § 33-622.)

34-624. (1931, ch. 18, § 23, p. 29; I.C.A., § 33-623; am. 1933, ch. 185, § 7, p. 341; am. 1953, ch. 39, § 1, p. 58; am. 1957, ch. 82, § 1, p. 133; am. 1966 (3rd E.S.), ch. 5, § 15, p. 16; am. 1967, ch. 360, § 5, p. 1011.)

34-624A. (1966 (3rd E.S.), ch. 5, § 16, p. 16; am. 1967, ch. 360, § 6, p. 1011.)

Legislative Intent. — Section 9 of S.L. 1985, ch. 29 read: "This act shall be in full force and effect on and after July 1, 1985; provided that notwithstanding the provisions

of sections 3, 4, 5 and 6 of this act, it is the intent of the legislature that the provisions of this act requiring that persons be admitted to the practice of law within this state for at least ten years prior to taking office, shall not apply to justices or judges holding office on the effective date of this act, nor prohibit them from seeking election, reelection or appointment to the office of supreme court justice, court of appeals judge, or district judge, as provided by law."

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of

governmental unit for specified period. 65 A.L.R.3d 1048.

34-616. Election of district judges — Qualifications. — (1) At the primary election, 1974, and every four (4) years thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected in each judicial district a sufficient number of district judges to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) No person shall be elected to the office of judge of the district court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and shall have resided within the judicial district one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of one hundred fifty dollars (\$150) which shall be deposited in the general fund. [1970, ch. 140, § 96, p. 351; am. 1970, ch. 231, § 1, p. 643; am. 1972, ch. 46, § 2, p. 84; am. 1985, ch. 29, § 7, p. 52; am. 1996, ch. 28, § 12, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-616 was repealed. See Prior Laws, § 34-615.

Legislative Intent. — Section 9 of S.L. 1985, ch. 29 read: "This act shall be in full force and effect on and after July 1, 1985; provided that notwithstanding the provisions of sections 3, 4, 5 and 6 of this act, it is the intent of the legislature that the provisions of this act requiring that persons be admitted to the practice of law within this state for at

least ten years prior to taking office, shall not apply to justices or judges holding office on the effective date of this act, nor prohibit them from seeking election, reelection or appointment to the office of supreme court justice, court of appeals judge, or district judge, as provided by law."

Effective Dates. — Section 5 of S.L. 1972, ch. 46 declared an emergency. Approved February 28, 1972.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of

governmental unit for specified period. 65 A.L.R.3d 1048.

34-617. Election of county commissioners — Qualifications. —

(1) A board of county commissioners shall be elected in each county at the general elections as provided by section 31-703, Idaho Code.

(2) No person shall be elected to the board of county commissioners unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States, and shall have resided in the county one (1) year next preceding his election and in the district which he represents for a period of ninety (90) days next preceding the primary election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 97, p. 351; am. 1982, ch. 332, § 2, p. 839; am. 1993, ch. 159, § 1, p. 409; am. 1996, ch. 28, § 13, p. 67.]

STATUTORY NOTES

Cross References. — District from which member elected, § 31-702.

Prior Laws. — Former § 34-617 was repealed. See Prior Laws, § 34-615.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975); Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982).

DECISIONS UNDER PRIOR LAW**ANALYSIS**

Counting of votes.

Vacancies.

Counting of Votes.

While commissioners are elected one from each district, voters of the whole county should cast their votes for each of the commissioners, and all votes so cast should be counted in determining who is elected to board. Cunningham v. George, 3 Idaho 456, 31 P. 809 (1892).

next general election recognizes the democratic principle requiring that elective offices shall, if possible, be filled at all times by incumbents chosen by electors, and that it is general policy of law that vacancies shall be filled at an election as soon as practicable after vacancy occurs. Winter v. Davis, 65 Idaho 696, 152 P.2d 249 (1944).

Vacancies.

Statutory provisions relating to filling vacancies in county offices by appointment until

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-618. Election of county sheriffs — Qualifications. — (1) At the general election, 1972, and every four (4) years thereafter, a sheriff shall be elected in every county.

(2) No person shall be elected to the office of sheriff unless he has attained the age of twenty-one (21) years at the time of election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

(5) Each person who has been elected to the office of sheriff for the first time shall complete a tutorial concerning current Idaho law and rules as prescribed by the Idaho peace officers standards and training academy, unless the person is already certified as a chief of police, peace officer or detention deputy in the state of Idaho, and shall attend the newly elected sheriffs' school sponsored by the Idaho sheriffs' association. [1970, ch. 140, § 98, p. 351; am. 1996, ch. 28, § 14, p. 67; am. 2008, ch. 329, § 1, p. 901.]

STATUTORY NOTES

Prior Laws. — Former § 34-618 was repealed. See Prior Laws, § 34-615.

Amendments. — The 2008 amendment, by ch. 329, added subsection (5).

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Term.

Const., Art. XVIII, § 6, as amended at the 1964 election, provided that the legislature should "commencing with general election in 1964 provide *** for the election of a sheriff every four years ***." This provision was

self-executing and the term of the sheriff elected in 1964 was for four years regardless of whether the legislature obeyed the constitutional mandate. *Haile v. Foote*, 90 Idaho 261, 409 P.2d 409 (1965).

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of

governmental unit for specified period. 65 A.L.R.3d 1048.

34-619. Election of clerks of district courts — Qualifications. —

(1) At the general election, 1974, and every four (4) years thereafter, a clerk of the district court shall be elected in every county. The clerk of the district court shall be the ex officio auditor and recorder.

(2) No person shall be elected to the office of clerk of the district court unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 99, p. 351; am. 1996, ch. 28, § 15, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-619 was repealed. See Prior Laws, § 34-615.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-620. Election of county treasurers — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a county treasurer shall be elected in every county. The county treasurer shall be the ex officio public administrator and ex officio tax collector.

(2) No person shall be elected to the office of county treasurer unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 100, p. 351; am. 1971, ch. 193, § 2, p. 879; am. 1996, ch. 28, § 16, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-620 was repealed. See Prior Laws, § 34-615.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-621. Election of county assessors — Qualifications. — (1) At the general election, 1974, and every four (4) years thereafter, a county assessor shall be elected in every county.

(2) No person shall be elected to the office of county assessor unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 102, p. 351; am. 1971, ch. 193, § 3, p. 879; am. 1996, ch. 28, § 17, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-621 was repealed. See Prior Laws, § 34-615.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-622. Election of county coroners — Qualifications. — (1) At the general election, 1986, and every four (4) years thereafter, a coroner shall be elected in every county.

(2) No person shall be elected to the office of coroner unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 102, p. 351; am. 1994, ch. 54, § 5, p. 93; am. 1996, ch. 28, § 18, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-622 was repealed. See Prior Laws, § 34-615.

Effective Dates. — Section 7 of S.L. 1994, ch. 54, provided that “an emergency existing therefor, which emergency is hereby declared

to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-623. Election of county prosecuting attorneys — Qualifications. — (1) At the general election, 1984, and every four (4) years thereafter, a prosecuting attorney shall be elected in every county.

(2) No person shall be elected to the office of prosecuting attorney unless he has attained the age of twenty-one (21) years at the time of his election, is admitted to the practice of law within this state, is a citizen of the United States and a qualified elector within the county.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. [1970, ch. 140, § 103, p. 351; am. 1972, ch. 115, § 1, p. 230; am. 1984, ch. 80, § 1, p. 147; am. 1996, ch. 28, § 19, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-623 was repealed. See Prior Laws, § 34-615. ch. 80 declared an emergency. Approved March 23, 1984.

Effective Dates. — Section 2 of S.L. 1984,

34-624. Election of precinct committeemen — Qualifications. —

(1) At the primary election, 1980, and every two (2) years thereafter, a precinct committeeman for each political party shall be elected in every voting precinct within each county. The term of office of a precinct committeeman shall be from the eighth day following the primary election until the eighth day following the next succeeding primary election.

(2) No person shall be elected to the office of precinct committeeman unless he has attained the age of eighteen (18) years at the time of his election, is a citizen of the United States and shall have resided within the voting precinct for a period of six (6) months next preceding his election.

(3) Each candidate shall file a declaration of candidacy with the county clerk.

(4) No filing fee shall be charged any candidate at the time of his filing his declaration of candidacy. [1970, ch. 140, § 104, p. 351; am. 1971, ch. 29, § 1, p. 73; am. 1972, ch. 128, § 1, p. 256; am. 1975, ch. 174, § 16, p. 469; am. 1979, ch. 309, § 3, p. 833; am. 1996, ch. 28, § 20, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-624 was repealed. See Prior Laws, § 34-615. ch. 128 declared an emergency. Approved March 13, 1972.

Effective Dates. — Section 2 of S.L. 1972,

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

34-624A. Alternative to precinct committeeman — Precinct committeeman and voters' delegate to the party's county and district conventions. — (1) At least sixty (60) days prior to an election at which precinct committeemen are to be elected, the state chairman of any Idaho political party may request the secretary of state to replace, as to that party chairman's party, the ballot position title of "precinct committeeman" with the ballot position title "precinct committeeman and voters' delegate to the party's county and district conventions." The party chairman making such a request to the secretary of state shall include with his request a sworn and acknowledged affidavit stating that he is the party chairman for his political party and that it is the state policy of his party that precinct committeemen be delegates to the party's county and district conventions.

(2) Upon receipt of such request and affidavit, the secretary of state shall have the duty to implement the request when prescribing the form and content of ballots and related documents and when preparing ballot instructions for Idaho counties.

(3) After the secretary of state has ordered such use, whenever the title “precinct committeeman” or its plural form shall be used in the Idaho Code, the title shall be construed to include within its meaning the title “precinct committeeman and voters’ delegate to the party’s county and district conventions” or its plural form. [I.C., § 34-624A, as added by 1976, ch. 346, § 1, p. 1153.]

STATUTORY NOTES

Prior Laws. — Former § 34-624A was repealed. See Prior Laws, § 34-615.

Effective Dates. — Section 2 of S.L. 1976, ch. 346 declared an emergency. Approved

April 1, 1976. The attorney general ruled that S.L. 1976, Chapter 346 became law without the governor’s signature on March 31, 1976.

34-625. Election of highway district commissioners in single countywide districts — Qualifications. — (1) In each general election, highway district commissioners in single countywide districts shall be elected as provided for in section 40-1404, Idaho Code.

(2) No person shall be elected to the office of highway district commissioner unless he shall have attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall be a resident of the highway district commissioner’s subdistrict for which he seeks office.

(3) Each candidate shall file a declaration of candidacy with the county clerk not less than ninety (90) days prior to the general election. Each declaration of candidacy shall also bear the following words: “I am a resident within the boundaries of Highway District Commissioner’s Subdistrict Number”

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ten dollars (\$10.00) which shall be deposited in the county current expense fund. [I.C., § 34-625, as added by S.L. 1972, ch. 345, § 1, p. 1013; am. 1985, ch. 253, § 4, p. 586; am. 1987, ch. 75, § 1, p. 146; am. 1998, ch. 300, § 3, p. 987; am. 2007, ch. 313, § 1, p. 884.]

STATUTORY NOTES

Prior Laws. — A former § 34-625, which comprised S.L. 1931, ch. 18, § 24, p. 29; I.C.A., § 33-624; am. 1933, ch. 185, § 1, p. 341, was repealed by S.L. 1963, ch. 93, § 11, p. 291. S.L. 1965, ch. 247, § 1, p. 623 created a new § 34-625 which was repealed by S.L. 1970, ch. 140, § 207.

Amendments. — The 2007 amendment,

by ch. 313, substituted “not less than ninety (90) days” for “not more than ninety (90) days nor less than sixty (60) days” in subsection (3).

Effective Dates. — Section 3 of S.L. 1972, ch. 345 provided the act should take effect on and after July 1, 1972.

Section 5 of S.L. 1998, ch. 300 declared an emergency. Approved March 24, 1998.

RESEARCH REFERENCES

A.L.R. — Validity of requirement that candidate or public officer have been resident of

governmental unit for specified period. 65 A.L.R.3d 1048.

34-625A. Election of highway district commissioners in certain single countywide districts — Qualifications. — (1) In each general election, highway district commissioners in single countywide districts shall

be elected as provided for in section 40-1404A, Idaho Code.

(2) No person shall be elected to the office of highway district commissioner unless he shall have attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall be a resident of the highway district commissioner's subdistrict for which he seeks office.

(3) Each candidate shall file a declaration of candidacy with the county clerk not less than ninety (90) days prior to the general election. Each declaration of candidacy shall also bear the following words: "I am a resident within the boundaries of Highway District Commissioner's Subdistrict Number"

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ten dollars (\$10.00) which shall be deposited in the county current expense fund. [I.C., § 34-625A, as added by 1998, ch. 300, § 4, p. 987; am. 2007, ch. 313, § 2, p. 884.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 313, substituted "not less than ninety (90) days" for "not more than ninety (90) days nor less than sixty (60) days" in subsection (3).

Effective Dates. — Section 5 of S.L. 1998, ch. 300 declared an emergency. Approved March 24, 1998.

34-626. Petition in lieu of filing fee. — In lieu of paying the filing fee, candidates may qualify for the offices mentioned in section 34-604 through section 34-623, Idaho Code, by filing a declaration of candidacy and a nominating petition. The petition shall contain the signatures of qualified electors as follows:

- (a) One thousand (1,000) for any statewide office;
- (b) Five hundred (500) for any congressional district office (all signatures within proper district);
- (c) Two hundred (200) for the office of district judge (all signatures within proper district);
- (d) Fifty (50) for any legislative district office (all signatures within proper district);
- (e) Five (5) for any county office (county commissioner signatures shall be within commissioner district).

Signatures on such nominating petitions shall be verified in the manner prescribed in section 34-1807, Idaho Code. [I.C., § 34-626, as added by 1996, ch. 28, § 22, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-626, which comprised I.C., § 34-626, as added by 1983, ch. 213, § 3, p. 590; am. 1986, ch. 183, § 1, p. 480, was repealed by S.L. 1996, ch. 28, § 21, effective February 15, 1996.

Another former § 34-626 which comprised S.L. 1931, ch. 18, §§ 24, 25, p. 29; I.C.A., § 33-625; am. 1933, ch. 185, § 9, p. 341, was

repealed by S.L. 1963, ch. 93, § 11, p. 291.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 29 of S.L. 1996, ch. 28 declared an emergency. Became law without the Governor's signature, February 15, 1996.

34-627. Holders of partisan elective office changing political parties. — Whenever any holder of a partisan elective office desires to change political parties, the change shall only be effective if the holder files a declaration of intent to change political parties with the election official with whom the holder of the partisan elective office has filed his declaration of candidacy for the office that the holder of the partisan elective office currently holds. The party change shall be official five (5) calendar days after receipt of the declaration of intent provided in this section by the election official. After receiving the declaration of intent, the election official shall send a copy of the declaration to the affected political party central committees of both the political party, if any, that the holder of the partisan elective office desires to leave and the political party, if any, that the holder of the partisan elective office desires to join. A holder of a partisan elective office cannot change political parties between the date the holder of partisan elective office files for the primary election through three (3) months after the general election in which the partisan elective office was on the ballot. A holder of a partisan elective office only may change political parties pursuant to this section once per term. The election official shall be authorized to charge a holder of a partisan elective office desiring to change his political party a twenty-five dollar (\$25.00) fee to defray the election official's expenses in administering the provisions of this section. [I.C., § 34-627, as added by 1997, ch. 202, § 1, p. 576.]

STATUTORY NOTES

Prior Laws. — Former § 34-627, which comprised, S.L. 1931, ch. 18, § 26, p. 29; I.C.A., § 33-626; am. 1933, ch. 185, § 10, p. 341; am. 1953, ch. 263, § 1, p. 454; am. 1963, ch. 93, § 9, p. 291, was repealed by S.L. 1970, ch. 140, § 207.

34-627A — 34-639. Central committees — Counting of votes — Certification of candidates and of results — Vacancies after election. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 1970, ch. 140, § 207:

34-627A. (I.C., § 34-627A, as added by 1953, ch. 53, § 1, p. 72.)

34-628. (1931, ch. 18, § 27, p. 29; I.C.A., § 33-627; am. 1933, ch. 185, § 11, p. 341.)

34-629. (1931, ch. 18, § 28, p. 29; I.C.A., § 33-628.)

34-630. (1931, ch. 18, § 29, p. 29; I.C.A., § 33-629.)

34-631. (1931, ch. 18, § 30, p. 29; I.C.A., § 33-630.)

34-632. (1931, ch. 18, § 31, p. 29; I.C.A., § 33-631; am. 1959, ch. 146, § 6, p. 331; am. 1966 (3rd E.S.), ch. 5, § 17, p. 16; am. 1967, ch. 360, § 7, p. 1011.)

34-633. (1931, ch. 18, § 32, p. 29; I.C.A., § 33-632.)

34-634. (1931, ch. 18, § 33, p. 29; I.C.A., § 33-633; am. 1965 (E.S.), ch. 1, § 5, p. 5; am. 1966 (3rd E.S.), ch. 5, § 18, p. 16.)

34-635. (1931, ch. 18, § 34, p. 29; I.C.A., § 33-634; am. 1945, ch. 123, § 1, p. 189.)

34-636. (1931, ch. 18, § 35, p. 29; I.C.A., § 33-635; am. 1959, ch. 146, § 7, p. 331; am. 1965 (E.S.), ch. 1, § 6; 1966 (3rd E.S.), ch. 5, § 6.)

34-637. (1931, ch. 18, § 36, p. 29; I.C.A., § 33-636; am. 1959, ch. 146, § 8, p. 331; am. 1963, ch. 93, § 10, p. 291; am. 1965 (E.S.), ch. 1, § 5, p. 5; am. 1966 (3rd E.S.), ch. 5, § 20, p. 16.)

34-638. (1931, ch. 18, § 37, p. 29; I.C.A., § 33-637; am. 1961, ch. 75, § 1, p. 102; am. 1966 (3rd E.S.), ch. 5, § 21, p. 16.)

34-639. (1931, ch. 18, § 38, p. 29; I.C.A., § 33-638.)

34-640. Nomination by convention. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which § 33-639, was repealed by S.L. 1966 (3rd comprised 1931, ch. 18, § 39, p. 29; I.C.A., E.S.), ch. 5, § 22, p. 16.

34-641 — 34-649. Certificates of nomination — Fees — Publication — Declining nomination — Filling of vacancies. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — The following sections were repealed by S.L. 1970, ch. 140, § 207:

34-641. (1931, ch. 18, § 40, p. 29; I.C.A., § 33-640.)

34-642. (1931, ch. 18, § 41, p. 29; I.C.A., § 33-641.)

34-643. (1931, ch. 18, § 42, p. 29; I.C.A., § 33-642.)

34-644. (1931, ch. 18, § 43, p. 29; I.C.A., § 33-643.)

34-645. (1931, ch. 18, § 44, p. 29; I.C.A., § 33-644; am. 1944 (1st E.S.), ch. 2, § 5, p. 4.)

34-646. (1931, ch. 18, § 45, p. 29; I.C.A., § 33-645; am. 1944 (1st E.S.), ch. 2, § 6, p. 4; am. 1959, ch. 146, § 9, p. 331; am. 1965 (E.S.), ch. 1, § 8; am. 1966 (3rd E.S.), ch. 5, § 23; am. 1967, ch. 360, § 8, p. 1011.)

34-647. (1931, ch. 18, § 46, p. 29; I.C.A., § 33-646; am. 1944 (1st E.S.), ch. 2, § 7, p. 4.)

34-648. (1931, ch. 18, § 47, p. 29; I.C.A., § 33-647; am. 1965 (E.S.), ch. 1, § 9; am. 1966 (3rd E.S.), ch. 5, § 24, p. 16; am. 1967, ch. 360, § 13, p. 1011.)

34-649. (1931, ch. 18, § 48, p. 29; I.C.A., § 33-648.)

34-650, 34-650A. Run-off primary elections. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised I.C., §§ 34-650, 34-650A, as added by 1959, ch. 146, §§ 10, 11, p. 331, were repealed by S.L. 1963, ch. 93, § 11, p. 291.

34-651. "Political party" defined. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section which comprised S.L. 1970, ch. 228, § 1, p. 637 was repealed by S.L. 1970, ch. 140, § 207, effective January 1, 1971. A former section which comprised S.L. 1919, ch. 107, § 2, p. 372; C.S., § 517; am. 1927, ch. 83, § 1, p. 101 was repealed by S.L. 1970, ch. 228, § 2.

CHAPTER 7**NOMINATIONS — CONVENTIONS — PRIMARY ELECTIONS****SECTION.**

34-701. Declarations of candidacy and petitions — Form prescribed by secretary of state — Filing fees.

34-702. Requirements for write-in candidates at primary.

34-702A. Declaration of intent for write-in candidates.

34-703. Nomination at primary.

34-704. Declaration of candidacy.

SECTION.

34-705. With whom declarations filed.

34-706. Notification to parties.

34-707. Party conventions.

34-708. Independent candidates.

34-708A. Independent candidates for president and vice-president.

34-709, 34-710. [Repealed.]

34-711. Certification of candidates for president, vice president and presidential electors.

SECTION.

- 34-711A. Certification of independent presidential electors.
- 34-712. Sample form for primary election ballots.
- 34-713. Preparation of primary ballots.
- 34-714. Filling vacancies in slate of political party candidates occurring prior to primary election.
- 34-715. Filling of vacancies occurring before or after primary election.
- 34-716. Vacancies of candidates for nonpartisan offices occurring before general election not filled — Exceptions — Judicial offices.
- 34-717. Withdrawal of candidacy.
- 34-718 — 34-722. [Repealed.]
- 34-723 — 34-730. [Reserved.]

PRESIDENTIAL PREFERENCE PRIMARY

SECTION.

- 34-731. Presidential preference vote.
- 34-732. Selection of candidates for nomination in presidential primary.
- 34-733. Notification to candidates — No affidavit of candidacy required.
- 34-734. Voting in presidential primary.
- 34-735. Candidate's list of proposed delegates to national convention.
- 34-736. Delegates to national convention.
- 34-737. Uncommitted delegates.
- 34-738. Conduct of election.
- 34-739. Costs of presidential preference primary notice and ballots.
- 34-740. Rules and regulations.

34-701. Declarations of candidacy and petitions — Form prescribed by secretary of state — Filing fees. — (1) The secretary of state shall prescribe the form for all declarations of candidacy and petitions required to be filed for any office. This form shall be uniform throughout the state; provided, however, that a candidate for judicial office must designate the particular office that he seeks, both in his petitions and declaration of candidacy.

(2) All filing fees shall be paid in cash, cashier's check, postal money orders, or personal check. [1970, ch. 140, § 105, p. 351; am. 1970, ch. 231, § 2, p. 643; am. 1983, ch. 213, § 4, p. 590.]

STATUTORY NOTES

Cross References.— Filing fees for various offices, §§ 34-604 — 34-626.

Penalties for violation of election laws, §§ 18-2301 — 18-2323.

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 208:

34-701. (1933, ch. 16, § 1, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 1, p. 325.)

34-702. (1933, ch. 16, § 2, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1949, ch. 86, § 5, p. 149; am. 1955, ch. 164, § 2, p. 325; am. 1967, ch. 148, § 1, p. 334.)

34-703. (1933, ch. 16, § 3, p. 18; am. 1935, ch. 12, § 1, p. 27.)

34-704. (1933, ch. 16, § 4, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 3, p. 325.)

34-705. (1933, ch. 16, § 5, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 4, p. 325.)

34-706. (1933, ch. 16, § 6, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 5, p. 325.)

34-707. (1933, ch. 16, § 7, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1937, ch. 106, § 1, p. 158; am. 1955, ch. 164, § 6, p. 325.)

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Mandamus.

Non-party member.

Mandamus.

Supreme Court accepted original jurisdiction of mandamus to compel secretary of state to accept and file declaration of candidacy, where validity of constitutional amendment was in issue and time remaining before nominating convention was short. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

Non-party Member.

There is no provision of primary law that forbids a political party from nominating one who is not a member of such party, and such nomination does not create a vacancy on such party ticket. *Sutphen v. Enking*, 39 Idaho 728, 230 P. 38 (1924).

RESEARCH REFERENCES

A.L.R. — Constitutionality of candidate participation provisions for primary elections. 121 A.L.R.5th 1.

34-702. Requirements for write-in candidates at primary. — In addition to possessing all other qualifications, in order to become a candidate of a political party at the general election, those candidates whose names are written in at the primary election must receive at least the following number of write-in votes at the primary election:

- (1) One thousand (1,000) for any statewide office;
- (2) Five hundred (500) for a congressional district office;
- (3) Fifty (50) for a legislative district office;
- (4) Five (5) for a county office;

file a declaration of candidacy for that office, and must pay the filing fee required for that office within ten (10) days following the primary election canvass; provided, however, that no write-ins shall be allowed for judicial office. [1970, ch. 140, § 106, p. 351; am. 1970, ch. 231, § 3, p. 643; am. 1976, ch. 60, § 1, p. 200; am. 1996, ch. 28, § 23, p. 67.]

STATUTORY NOTES

Prior Laws. — Former § 34-702 was repealed. See Prior Laws, § 34-701.

JUDICIAL DECISIONS

Cited in: *Robinson v. Bodily*, 97 Idaho 199, 541 P.2d 623 (1975).

34-702A. Declaration of intent for write-in candidates. — No write-in vote for any office in a primary, special, or general election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or legislative district office and with the county clerk if for a county office. Such declaration of intent shall be filed not later than fourteen (14) days before the day of election. The secretary of state shall prescribe the form for said declaration.

In those counties which utilize optical scan ballots an elector shall not place on the ballot a sticker bearing the name of a person, or use any other method or device, except writing, to vote for a person whose name is not printed on the ballot. [I.C., § 34-702A, as added by 1983, ch. 213, § 5, p.

590; am. 1992, ch. 176, § 3, p. 553; am. 1993, ch. 313, § 4, p. 1157; am. 1999, ch. 221, § 1, p. 588; am. 2001, ch. 272, § 1, p. 993.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1992, ch. 176 read: "It is the finding of the legislature that the process of exercising the elective franchise should be made as accessible as possible for as many citizens as possible. The provisions of this bill will achieve a significant consolidation of elections on four (4) election dates in each year. In addition, this election code, which applies to the various political subdivisions of the state of Idaho, will assure access to the nominating process, registration of potential electors, absentee voting opportunity and an increased visibility of the electoral process to assure public access and increase participation. At a future date, it may be warranted to further consolidate elec-

tions as events demonstrate that need. The goal of providing increased visibility for the electoral process will be well served by this consolidation of elections, by the increased public notice of filing and election deadlines, and the public education which will accompany the implementation of this act."

Effective Dates. — Section 7 of S.L. 1992, ch. 176 read: "This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992."

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

34-703. Nomination at primary. — (1) All political party candidates for United States senator and representative in congress and all political party candidates for elective state, district and county offices, except candidates for judicial office, at general elections shall be nominated at the primary elections, or shall have their names placed on the general election ballot as provided by law, and shall comply with the provisions of this act.

(2) All candidates for judicial office shall be nominated or elected at the primary election, as provided by section 34-1217, Idaho Code.

(3) Independent candidates shall not be voted on at primary elections. [I. C., § 34-703, as added by 1971, ch. 5, § 2, p. 11; am. 1972, ch. 46, § 3, p. 84; am. 1976, ch. 60, § 2, p. 200.]

STATUTORY NOTES

Cross References. — Presidential preference primary, §§ 34-731 — 34-740.

Prior Laws. — Former § 34-703 was repealed. See Prior Laws, § 34-701.

Compiler's Notes. — The words "this act", at the end of subsection (1), were added by S.L. 1971, Chapter 5, which is codified as §§ 34-703 to 34-707, 34-2421, and 34-2422. Because these provisions may have been inadvertently omitted from S.L. 1970, Chapter 140 (House Bill 555), "this act" may have been meant to refer to that act, which is codified throughout Title 34. Section 1 of S.L. 1971, ch. 5 read:

"The purpose of this bill is to correct inadvertent omissions which occurred in the en-

grossing process after House Bill No. 555 was amended in the House in the Second Regular Session of the Fortieth Idaho Legislature. The bill, a substantial rewrite of the election laws, was initially properly printed. The bill was passed by the House as amended and sent to be engrossed. The engrosser omitted the following material from the bill sent to the Senate. The erroneous bill passed the Senate and was signed by the Governor. The omitted material thus did not become law. The error was later discovered and the code commissioners then compiled the statutes in such a way as to facilitate adding the text which constitute section 2 through 8 of this bill."

JUDICIAL DECISIONS

ANALYSIS

Placement on general election ballot.
Political parties construed.

Placement on General Election Ballot.

Where the unsuccessful candidate for county commissioner at primary election had been denied only the placement of his name on the general election ballot and not the right to be an independent candidate, the election laws did not deny such candidate equal protection of law, nor did they abridge the free and equal exercise of the right of suffrage by those wishing to vote for an inde-

pendent candidate. *Robinson v. Bodily*, 97 Idaho 199, 541 P.2d 623 (1975).

Political Parties Construed.

The reference to political parties is only to political parties in existence at the time of the last preceding general election, and not to newly formed political parties. *American Indep. Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 442 P.2d 766 (1968).

DECISIONS UNDER PRIOR LAW

Non-party Member.

There was no provision of primary law which forbade political party from nominating one who was not member of such party,

and such nomination did not create vacancy on such party ticket. *Sutphen v. Enking*, 39 Idaho 727, 230 P. 38 (1924).

34-704. Declaration of candidacy. — Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8 a.m., on the twelfth Monday preceding the primary election and 5 p.m., on the tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy, except candidates for nonpartisan office.

Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

Independent candidates shall file their declaration of candidacy in the manner provided in section 34-708, Idaho Code. [I.C., § 34-704, as added by 1971, ch. 5, § 3, p. 11; am. 1971, ch. 188, § 1, p. 867; am. 1972, ch. 46, § 4, p. 84; am. 1972, ch. 346, § 1, p. 1015; am. 1975, ch. 174, § 17, p. 469; am. 1976, ch. 60, § 3, p. 200; am. 1979, ch. 309, § 4, p. 833; am. 1983, ch. 213, § 6, p. 590; am. 1984, ch. 8, § 1, p. 12; am. 1984, ch. 173, § 3, p. 414; am. 1989, ch. 70, § 1, p. 111; am. 2003, ch. 48, § 10, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 34-704 was repealed. See Prior Laws, § 34-701.

Legislative Intent. — Section 1 of S.L. 1984, ch. 173 read: "STATEMENT OF LEGISLATIVE FINDINGS. The Legislature recognizes that many factors impact decisions regarding legislative apportionment. In adoption of the provisions of this act, the Legislature was cognizant that apportionment is fundamental to good government. In all decisions implemented in this act, certain principles governed. The most important of these was achievement of one person, one vote, as mandated by the federal constitution and interpretations by federal courts. In addition, recognition of county boundaries, creation of

compact and contiguous districts, preservation of historical socioeconomic relationships, and recognition of natural topographical barriers weighed heavily upon these deliberations. The Legislature has been particularly aware of the requirements of Section 5, Article III, of the Constitution of the State of Idaho. The necessary balance between principles of the United States Constitution and guarantees of the Idaho Constitution has been placed squarely before the Idaho Legislature. The resulting apportionment, contained herein, is a balance of these and other special criteria, noted in this statement as applicable.

"In certain districts, there exist such

unique conditions, that deviation from the ideal of one person, one vote, seems not only warranted, but mandated. In Legislative District No. 1 composed of Bonner and Boundary Counties, these counties are bounded on three sides by other states and a foreign nation. No other combination of counties is possible which accomplishes representation of these populations. Similarly, Kootenai County, in Districts No. 2 and No. 3, has deviations from the ideal which may exceed the most desirable, but the county is given recognition through two districts entirely within its boundaries. Any combination with other counties would only serve to dilute the representation of Kootenai County as a separate and distinct unit.

"Benewah and Shoshone Counties are combined in a district without other counties based upon their traditional ties of economic and social interests.

"Four Legislative Districts, No. 5, No. 6, No. 7 and No. 8, illustrate legislative efforts to minimize deviations when it was possible without diluting representation. A flotal district concept is utilized in this area to achieve the representation to which the population total is entitled. The size of the flotal district is limited, however, to five counties, because inclusion of the ten counties north of the southern Idaho County boundary would create a district so large and cumbersome as to be difficult to represent. The diversity of interests thrown into a single district merely for the achievement of minimal deviation would then negate the legitimate representation of these interests.

"District No. 9, which is well below the ideal district size, nevertheless consists of four large and sparsely populated counties. While mathematical purity might be achieved by a combination of these and some northern counties, representation of like interests would be diluted.

"District No. 22 is well above the ideal district size, but represents a combination of counties very large in size, and without responsible alternatives. Bounded as it is by two states, Owyhee County with its sparsely populated expanse, warrants special consideration. Any combination of Owyhee County with another county than Elmore, would result in unnecessary and unwarranted dilution of the representation of the other county.

"District No. 23, composed of five counties of Butte, Clark, Custer, Jefferson and Lemhi, once again illustrates the problems of size and population density. These counties have nat-

ural similarities of economic and social interests. They are bounded by another state on one side and by the natural topographical limitation of a large wilderness area and imposing mountain range on the other. While their interests are similar enough to be amenable to good representation, further division or other combinations would only dilute good representation.

"Use of two flotal districts in the southeastern corner of the state achieves better representation because the counties included are similar in their socioeconomic traditions. The size of the resulting districts is not excessive and the similarities of interests would make good representation a reasonable expectation. Further, flotal districts used here make it possible to represent individual counties, thereby maximizing county representation in the Legislature. Only through the use of a flotal district is Bingham County assured the representation to which its population would entitle it.

"While the concept of one person, one vote, has been preeminent in the accomplishment of this apportionment, another important factor has also been considered, and that is achievement of access to good representation. Each case of deviation from the ideal population size has been considered in light of the special circumstances which might warrant that deviation from the first principle, and the resulting enactment herein contained is a merger of these diverse interests and principles."

Compiler's Notes. — Section 6 of S.L. 1984, ch. 173 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates. — Section 5 of S.L. 1972, ch. 46 declared an emergency. Approved February 28, 1972.

Section 2 of S.L. 1984, ch. 8 declared an emergency. Approved February 24, 1984.

Section 5 of S.L. 1984, ch. 173 declared an emergency and made the act effective retroactively to November 1, 1983, except that the legislative districts as they existed for the purposes of the 1982 general election continued to exist for all necessary purposes of the Forty-seventh Legislature. Approved April 2, 1984.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199,

541 P.2d 623 (1975); *Hellar v. Cenarrusa*, 106 Idaho 617, 682 P.2d 570 (1984).

34-705. With whom declarations filed. — All candidates for county offices, whether political party candidates or independent candidates, and all political party candidates for precinct offices shall file their declarations of candidacy with the county clerk of their respective counties. All candidates for district, state and federal offices shall file their declarations of candidacy with the secretary of state.

The secretary of state, shall certify to the county clerks, within ten (10) days after the filing deadline, the names of the political party candidates who filed for federal, state and district offices and are qualified and by not later than the tenth day prior to the primary shall certify the names of political party candidates who have been appointed by central committees to fill vacancies as provided by section 34-714, Idaho Code. [I.C., § 34-705, as added by 1971, ch. 5, § 4, p. 11; am. 1971 (E. S.), ch. 9, § 3, p. 20; am. 1976, ch. 60, § 4, p. 200.]

STATUTORY NOTES

Prior Laws. — Former § 34-705 was repealed. See Prior Laws, § 34-701.

JUDICIAL DECISIONS

Cited in: *Robinson v. Bodily*, 97 Idaho 199, 541 P.2d 623 (1975).

34-706. Notification to parties. — Within three (3) days after the deadline for filing declarations of political party candidacy the county clerk shall notify the county central committee of each political party of the candidates who have filed for county and precinct offices under the party name and are qualified.

Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the legislative district central committee of each political party of the legislative candidates who have filed under the party name and are qualified.

Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the state central committee of each political party of the candidates who have filed for federal and state offices under the party name and are qualified. [I.C., § 34-706, as added by 1971, ch. 5, § 5, p. 11; am. 1971, ch. 188, § 2, p. 867; am. 1971 (E.S.), ch. 9, § 4, p. 20; am. 1976, ch. 60, § 5, p. 200; am. 1989, ch. 70, § 2, p. 111.]

STATUTORY NOTES

Prior Laws. — Former § 34-706 was repealed. See Prior Laws, § 34-701.

JUDICIAL DECISIONS

Cited in: *Hellar v. Cenarrusa*, 106 Idaho 617, 682 P.2d 570 (1984).

34-707. Party conventions. — A state convention shall be held by each political party in each election year at a time and place determined by the state central committee. The state central committee chairman shall preside and cause notice to be given to each legislative district central committee and each county central committee at the earliest possible date.

Each state convention shall write and adopt rules and regulations governing the conduct of their respective conventions.

At their convention each political party may:

- (1) Adopt and write a party platform.
- (2) Elect any desired officers not otherwise provided for by law.
- (3) In the year of presidential elections (a) elect delegates to the national convention in the manner prescribed by national party rules; (b) elect a national committeeman and a national committeewoman; and (c) select presidential electors.

(4) Adopt rules, regulations and directives regarding party policies, practices and procedures. [1970, ch. 140, § 111, p. 351; am. 1971, ch. 5, § 6, p. 11; am. 1971 (E.S.), ch. 9, § 5, p. 20; am. 1973, ch. 122, § 1, p. 232; am. 1980, ch. 236, § 1, p. 524; am. 2003, ch. 94, § 1, p. 279.]

STATUTORY NOTES

Prior Laws. — Former § 34-707 was repealed. See Prior Laws, § 34-701.

Effective Dates. — Section 2 of S.L. 1980, ch. 236, declared an emergency and provided that the act should take effect on and after June 20, 1980.

34-708. Independent candidates. — (1) No person may offer himself as an independent candidate at the primary election.

(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, during the period specified in section 34-704, Idaho Code. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks election. Each such declaration must be accompanied by a petition containing the following number of signatures of qualified electors:

- (a) One thousand (1,000) for any statewide office;
- (b) Five hundred (500) for any congressional district office;
- (c) Fifty (50) for any legislative district office;
- (d) Five (5) for any county office.

(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state. [I.C., § 34-708, as added by 1976, ch. 60, § 6, p. 200; am. 1979, ch. 309, § 5, p. 833; am. 1995, ch. 115, § 1, p. 385; am. 1996, ch. 28, § 24, p. 67; am. 2003, ch. 293, § 1, p. 795.]

STATUTORY NOTES

Prior Laws. — Former § 34-708, which comprised 1933, ch. 16, § 8, p. 18; am. 1935, ch. 12, § 1, p. 27, was repealed by S.L. 1970, ch. 140, § 208. S.L. 1970, ch. 140, § 112 created a new § 34-708 which was repealed by S.L. 1971 (E.S.), ch. 9, § 9.

34-708A. Independent candidates for president and vice-president. — Persons who desire to be independent candidates for the offices of president and vice-president, must file, prior to August 25 of the election year, declarations of candidacy as independent candidates. Such declarations must state that such persons are offering themselves as independent candidates and must declare that they have no political party affiliation. The declarations shall have attached thereto a petition signed by a number of qualified electors not less than one percent (1%) of the number of votes cast in this state for presidential electors at the previous general election at which a president of the United States was elected.

The candidates for president and vice-president shall be considered as candidates for one (1) office, and only one (1) such petition need be filed for both offices.

Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code. [I.C., § 34-708A, as added by 1977, ch. 14, § 1, p. 30; am. 1979, ch. 309, § 6, p. 833; am. 1985, ch. 42, § 3, p. 87; am. 1987, ch. 262, § 2, p. 553; am. 1996, ch. 28, § 25, p. 67.]

34-709, 34-710. Certification of candidates — Placing of names on ballot. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised I.C., §§ 34-709, 34-710, as added by 1953, ch. 36, § 1, p. 52, were repealed by S.L. 1970, ch. 140, § 208. The 1970 act created new §§ 34-709 and 34-710, which comprised S.L. 1970, ch. 140, §§ 113, 114; am. 1971, ch. 188, § 3, and which were repealed by S.L. 1971 (E.S.), ch. 9, § 9.

34-711. Certification of candidates for president, vice president and presidential electors. — The state chairman of each political party shall certify the names of the presidential and vice-presidential candidates and presidential electors to the secretary of state on or before September 1, unless a five (5) day extension is granted by the secretary of state, in order for them to appear on the general election ballot. The secretary of state shall certify such candidates to the county clerks at the same time as certification of political party candidates nominated for state and federal offices by the

voters in the primary election. [1970, ch. 140, § 115, p. 351; am. 1972, ch. 346, § 2, p. 1015; am. 1976, ch. 60, § 7, p. 200; am. 1984, ch. 131, § 3, p. 305; am. 1985, ch. 42, § 4, p. 87; am. 2003, ch. 94, § 2, p. 279.]

STATUTORY NOTES

Prior Laws. — Former § 34-711, which comprised I.C., § 34-711, as added by 1953, ch. 36, § 1, p. 52, was repealed by S.L. 1970, ch. 140, § 208.

34-711A. Certification of independent presidential electors. — Independent candidates who have qualified for ballot status pursuant to section 34-708A, Idaho Code, shall certify the names of presidential electors to the secretary of state on or before September 1, in order for them to appear on the general election ballot. The secretary of state shall certify the independent presidential electors, and the independent candidates for president and vice-president, to the county clerks on or before September 7. [I.C., § 34-711A, as added by 1977, ch. 14, § 2, p. 30; am. 1984, ch. 131, § 4, p. 305; am. 1985, ch. 42, § 5, p. 87.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984. Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

34-712. Sample form for primary election ballots. — The secretary of state shall provide the sample form of the primary election ballot to each of the county clerks no later than forty (40) days prior to the primary. The sample ballot shall contain the proper political party candidates to be voted upon within the county whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of political party candidates seeking the political party nomination for county and precinct offices. If a county is within more than one (1) legislative district, the secretary of state shall provide a sample ballot for each legislative district which includes part of the county. [1970, ch. 140, § 116, p. 351; am. 1970, ch. 231, § 4, p. 643; am. 1971, ch. 188, § 4, p. 867; am. 1971 (E.S.), ch. 9, § 6, p. 20; am. 1972, ch. 346, § 3, p. 1015; am. 1976, ch. 60, § 8, p. 200.]

STATUTORY NOTES

Prior Laws. — Former §§ 34-712 — 34-714, which comprised I.C., §§ 34-712 — 34-714, as added by 1953, ch. 36, § 1, p. 52, were repealed by S.L. 1970, ch. 140 § 208.

34-713. Preparation of primary ballots. — Upon receipt of the sample ballot and instructions from the secretary of state, each county clerk shall print and prepare the official primary ballots for the forthcoming election. The printing of the ballots shall be a county expense and paid out of the county treasury except presidential preference primary ballots which shall be paid for as provided in section 34-739, Idaho Code.

Each county clerk shall cause to be published on the earliest date possible in May the names of all the political party candidates who shall appear on the primary ballot and the names of all political party candidates who shall appear on the presidential preference primary ballot. The names shall be listed alphabetically under each particular office title. [1970, ch. 140, § 117, p. 351; am. 1975, ch. 174, § 13, p. 469; am. 1976, ch. 60, § 9, p. 200; am. 1979, ch. 309, § 7, p. 833.]

STATUTORY NOTES

Cross References. — Preparation, distribution and publication of sample ballots, § 34-2425.

Primary election ballots preparation, § 34-904.

Printing of ballots and ballot labels, § 34-2418.

Prior Laws. — Former § 34-713 was repealed. See Prior Laws, § 34-712.

34-714. Filling vacancies in slate of political party candidates occurring prior to primary election. — (1) Vacancies that occur before the primary election in the slate of candidates of any political party because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate, shall be filled in the following manner if only one (1) candidate declared for that particular office:

- (a) By the county central committee if the vacancy occurs for the office of precinct committeeman or for a county office.
- (b) By the legislative district central committee if the vacancy occurs for the office of state representative or state senator.
- (c) By the state central committee if the vacancy occurs for a federal or state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the primary ballot, file a declaration of candidacy and pay the required filing fee.

(2) No central committee shall fill any vacancy which occurs within ten (10) days prior to the primary election. Vacancies which occur during this ten (10) day period because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate shall be filled according to the provisions of section 34-715, Idaho Code.

(3) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled. [1970, ch. 140, § 118, p. 351; am. 1971 (E.S.), ch. 9, § 7, p. 20; am. 1975, ch. 21, § 3, p. 30; am. 1976, ch. 60, § 10, p. 200; am. 1989, ch. 70, § 3, p. 111; am. 1996, ch. 28, § 26, p. 67; am. 1999, ch. 222, § 1, p. 588.]

STATUTORY NOTES

Prior Laws. — Former § 34-714 was repealed. See Prior Laws, § 34-712.

JUDICIAL DECISIONS

Cited in: *Hellar v. Cenarrusa*, 106 Idaho 617, 682 P.2d 570 (1984).

34-715. Filling of vacancies occurring before or after primary election. — Vacancies that occur during the ten (10) day period before a primary election, or after the primary election but at least ten (10) days before the general election in the slate of candidates of any political party, except candidates for precinct committeeman, shall be filled in the following manner:

(1) By the county central committee if it is a vacancy by a candidate for a county office.

(2) By the legislative district central committee if it is a vacancy by a candidate for the state legislature.

(3) By the state central committee if it is a vacancy by a candidate for a federal or a state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the general ballot, file a declaration of candidacy and pay the required filing fee.

Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled. [1970, ch. 140, § 119, p. 351; am. 1972, ch. 346, § 4, p. 1015; am. 1976, ch. 60, § 11, p. 200; am. 1977, ch. 21, § 1, p. 43; am. 1983, ch. 213, § 7, p. 590; am. 1996, ch. 28, § 27, p. 67; am. 1999, ch. 222, § 2, p. 588.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 1972, ch. 346 declared an emergency. Approved March 31, 1972.

Section 29 of S.L. 1996, ch. 28 declared an emergency. Became law without the Governor's signature, February 15, 1996.

JUDICIAL DECISIONS

Cited in: *Hansen v. Morgan*, 582 F.2d 1214 (9th Cir. 1978).

34-716. Vacancies of candidates for nonpartisan offices occurring before general election not filled — Exceptions — Judicial offices. — (1) All vacancies of candidates for nonpartisan offices that occur after the primary election but before the general election, except vacancies in the offices of nominated candidates for judicial office which shall be filled as provided in this section, shall not be filled.

(2) If a candidate for judicial office has received a majority of the votes cast for the office at the primary election, he shall be deemed elected as provided by section 34-1217, Idaho Code. Thereafter, if the judge-elect dies, moves from the state, or otherwise becomes ineligible to serve in the judicial

office, the secretary of state shall declare that a vacancy exists in the judicial office, but that no other candidate for the office will be offered at the general election. The vacancy shall be filled as provided by law, as if the judge-elect had already assumed office.

(3) If three (3) or more candidates sought a judicial office at the primary election, and no candidate for the judicial office received a majority of the votes cast for the office at the primary election, and either of the candidates certified to be a nominee at the general election dies, moves from the state, or otherwise becomes ineligible to serve in the judicial office, the secretary of state shall cause the name or names of the candidate or candidates receiving the next highest number of votes cast at the primary election after the two (2) candidates certified, to be certified as nominees for the judicial office at the general election, so that two (2) candidates shall be offered for each judicial office to be filled. In the event only one (1) vacancy on the general election ballot is to be filled by the procedure outlined in this subsection, and there exists a tie among two (2) or more judicial candidates receiving the next highest number of votes, such candidates, or their personal designees, shall meet in the office of the secretary of state at a time fixed by him upon ten (10) days written notice to such interested candidates, or their designees, and a candidate to fill each such vacancy on the general election ballot shall be selected by lot from the candidates receiving the same number of votes at the primary election. The secretary of state shall cause the name of the persons so selected to appear on the general election ballot. [1970, ch. 140, § 120, p. 351; am. 1972, ch. 333, § 1, p. 841.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1972, ch. 333 declared an emergency. Approved March 27, 1972.

34-717. Withdrawal of candidacy. — A candidate for nomination or candidate for election to an office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. The filing officer shall immediately notify the proper central committee of the party, if any, of the individual withdrawing. A candidate may not withdraw later than forty-five (45) days before an election, except in the case of a general election when the deadline shall be no later than September 7. Filing fees paid by the candidate shall not be refunded.

Any candidate who has filed a statement of withdrawal pursuant to this section shall not be allowed to be appointed to fill a vacancy unless such vacancy occurs because of the death of a previous candidate. [I.C., § 34-717, as added by 1983, ch. 213, § 8, p. 590; am. 1999, ch. 222, § 3, p. 588.]

STATUTORY NOTES

Prior Laws. — Former § 34-717, which comprised S.L. 1970, ch. 231, § 6, was repealed by S.L. 1972, ch. 333, § 2.

34-718 — 34-722. Filling of vacancies after nomination for judicial offices. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised S.L. 1970, ch. 231, §§ 7-11, were repealed by S.L. 1972, ch. 333, § 2.

34-723 — 34-730. [Reserved.]**PRESIDENTIAL PREFERENCE PRIMARY**

34-731. Presidential preference vote. — In years in which a president of the United States is to be nominated and elected, a presidential preference primary shall be held at which voters shall express their choice for candidates for nominations for president. The presidential preference primary shall be held in conjunction with the primary election, on the fourth Tuesday in May of each presidential year. [1975, ch. 174, § 1, p. 469; am. 1979, ch. 309, § 8, p. 833.]

34-732. Selection of candidates for nomination in presidential primary. — Each qualified elector shall have the opportunity to vote on the official presidential preference primary ballot for one (1) person to be the candidate for nomination by a party for president of the United States. The name of any candidate for a political party nomination for president of the United States shall be printed on the ballots only:

(1) If the secretary of state shall have determined, in his sole discretion, that the person's candidacy is generally advocated or recognized in national news media throughout the United States. For the purpose of promoting the aspect of a regional primary in this regard, the secretary of state may consult with the chief election officers of neighboring states which conduct a presidential primary election on the fourth Tuesday in May. The secretary of state shall publish the names of such persons determined by him to be such candidates, together with their party affiliation, not less than sixty (60) days prior to the date of the presidential preference primary; or

(2) Any candidate who was not placed upon the ballot by the secretary of state under the provisions of subsection (1) of this section shall be placed upon the ballot after filing a declaration of candidacy accompanied by a one thousand dollar (\$1,000) filing fee. The declaration shall be filed with the secretary of state no later than the fiftieth day prior to the date of the presidential preference primary. [1975, ch. 174, § 2, p. 469; am. 2007, ch. 202, § 2, p. 620.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 202, rewrote subsection (2), which formerly read: “If a petition for nomination meeting the requirements of subsection (3) of this section is filed with the secretary of state by members of a political party to which the candidate belongs”; and deleted subsection (3), which formerly read: “The petition referred to in subsection (2) hereof shall: (a) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to one per cent (1%) of the number of votes cast in this state for

presidential electors at the previous general election at which a president of the United States was elected; (b) Be filed with the secretary of state not later than thirty (30) days prior to the date of the presidential preference primary; (c) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures; (d) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.”

34-733. Notification to candidates — No affidavit of candidacy required. — The secretary of state shall forthwith notify each person whom he has nominated and each such person nominated by petition in writing by registered mail that such person’s name will be printed as a candidate on the Idaho presidential preference primary ballot. In the event the secretary of state is informed of a candidate’s death or incapacity, or withdrawal from the nomination, the secretary of state may, in his sole discretion, remove the name of such nominated candidate from the ballot, but not later than thirty (30) days prior to said election. No declaration of candidacy or affidavit of candidacy shall be required of any candidate as a condition for printing the name of that candidate on the official ballot used in the presidential preference primary. [1975, ch. 174, § 3, p. 469; am. 1983, ch. 213, § 9, p. 590.]

STATUTORY NOTES

Effective Dates. — Section 11 of S.L. 1983, ch. 213 declared an emergency. Approved April 13, 1983.

34-734. Voting in presidential primary. — At a presidential preference primary, qualified electors may vote for candidates for nomination for president of the United States from among the candidates of one political party only. The elector shall be able to cast his ballot for one (1) of the presidential candidates of his party, or for “none of the names shown.” A vote of the latter kind shall express the preference for an uncommitted delegation from Idaho to the national convention of that elector’s party. [1975, ch. 174, § 4, p. 469.]

RESEARCH REFERENCES

A.L.R. — Constitutionality of voter participation provisions for primary elections. 120 A.L.R.5th 125.

34-735. Candidate’s list of proposed delegates to national convention. — No later than ten (10) days prior to the presidential primary

election, each candidate for nomination by a party for president, or a designated representative of such candidate, shall file with the secretary of state a list of names and addresses of persons proposed by that candidate to be delegates to the national convention of the party of that candidate. The number of names set forth on such list of proposed delegates shall be equal to the number of delegates and alternates to the national party convention as are allotted to Idaho for that year by the national committee of that party. No person's name shall be placed on such a list of proposed delegates unless that person has attained the age of eighteen (18) years at the time said delegates' list is filed, is a citizen of the United States, is a qualified elector of the state of Idaho, and shall have resided in the state of Idaho for at least one (1) year next preceding filing of said list. The qualifications of each person, whose name appears on such list of proposed delegates, shall be verified by an affidavit of the candidate, or a representative of the candidate, and said affidavit shall be attached to said list so filed. The form of said affidavit shall be determined by the secretary of state. [1975, ch. 174, § 5, p. 469.]

34-736. Delegates to national convention. — (1) Upon completion of the state canvass of the results of the presidential primary, the secretary of state shall certify to the state chairman of each political party participating in the presidential primary the number of votes received by each candidate of that party and the number of votes for an uncommitted delegation received by that party.

(2) Each political party shall then select as many delegates and alternates to the national party convention as are allotted to it by the national committee of that party, according to the provisions of the following subsections of this section.

(3) Eighty per cent (80%) of such delegates and eighty per cent (80%) of such alternates to a national party convention shall be selected by a party at its state convention, or as the party rules otherwise provide, from among:

(a) The persons named on the lists of proposed delegates to the national conventions filed with the secretary of state by that party's respective candidates for nomination by the party for president of the United States; and

(b) The persons selected by that party at its state convention, or as the party rules otherwise provide, to comprise any uncommitted delegation.

(4) The number of delegates and the number of alternates selected by a party from a candidate's list of proposed delegates, or selected by that party to comprise any uncommitted delegation, shall bear the same proportion to eighty per cent (80%) of the total number of delegates and alternates allotted to such party as the total vote received by such candidate or uncommitted delegation bears to the total combined vote cast in said primary election for all candidates and uncommitted delegation, if any, receiving more than five per cent (5%) of the votes cast for that party. Upon determination of the number of delegates and alternates that shall be selected from each candidate's list of proposed delegates and that shall be selected to comprise an uncommitted delegation, if any, the party shall then

select delegates and alternates to that party's national convention in that respective number from each such list and to comprise the uncommitted delegation, if any. The delegates and alternates comprising any such uncommitted delegation shall be selected as the party rules determine.

(5) Twenty per cent (20%) of the delegates and twenty per cent (20%) of the alternates to a national party convention as are allotted to a party by the national committee of that party shall be selected as delegates and alternates to the national convention of that party as the party rules may determine.

(6) In the event a candidate in the presidential preference primary fails to file with the secretary of state a list of proposed delegates to his party's national convention, or to the extent that such list of proposed delegates provided by such candidate fails to name a sufficient number of persons qualified for the office of delegate, such number of delegates and alternates, as would be selected from said candidate's list of proposed delegates according to the election results, shall be selected by the party as delegates and alternates to that party's national convention, as the party rules may determine.

(7) When selecting a delegate or an alternate from a candidate's list of proposed delegates, as provided for in this section, the party shall have the authority to select any qualified person on that list for the office of such delegate or alternate.

(8) In calculating the apportionment of delegate votes in conjunction with the selection of delegates and alternates, as provided for in this section, such proportions of delegate votes shall be expressed as decimal-fractional votes or the nearest whole number of delegate votes as the rules of the particular national party or convention may provide.

(9) There shall be no unit rule applied to or by the delegation of any party to that party's national convention. No party or delegation shall commit or instruct delegates and alternates selected from that party's candidates' lists of proposed delegates or selected as uncommitted delegates and alternates. Other delegates and alternates may be committed and/or instructed as the party rules may provide. [1975, ch. 174, § 6, p. 469.]

34-737. Uncommitted delegates. — The word "uncommitted" as applied to a delegate or an alternate in this act means that such delegate or alternate is not committed or bound to any one candidate at his party's national convention, and that he is free to vote his conscience at such convention. [1975, ch. 174, § 7, p. 469.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" Chapter 174, which is compiled as §§ 34-731 as used in this section refer to S.L. 1975, to 34-740.

34-738. Conduct of election. — Insofar as practicable, and where the provisions of this act do not specifically indicate otherwise, the presidential preference primary election shall be conducted and canvassed in the

manner provided by law for the conduct and canvassing of state primary elections. [1975, ch. 174, § 8, p. 469.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 34-737.

34-739. Costs of presidential preference primary notice and ballots. — Whenever a presidential preference primary election is held as provided by this act, the state of Idaho shall assume all costs of publication of legal notice and ballot preparation for the presidential preference primary. The county clerk shall determine the legal notice and ballot preparation costs and shall file a certified claim therefor which shall be examined, allowed and paid as other claims against the state are paid. [1975, ch. 174, § 9, p. 469; am. 1979, ch. 309, § 9, p. 833.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 34-737.

34-740. Rules and regulations. — The secretary of state as chief election officer may adopt such rules and regulations as are necessary to facilitate the operation, accomplishment and purpose of this act. [1975, ch. 174, § 10, p. 469.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 34-737.

CHAPTER 8

REGISTRATION OF ELECTORS

SECTION.

34-801 — 34-818. [Repealed.]

34-801 — 34-818. Registrars and deputies — Appointment, notices, delivery of register. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter, which comprised 1890-1891, p. 57, §§ 45, 47; reen. 1899, p. 33, §§ 36, 38; reen. R.C., § 400; am. R.C., § 398; reen. 1917, ch. 44, §§ 6, 8, p. 102; C.L., §§ 398, 400; C.S., §§ 566, 568; 1931, ch. 220, §§ 1-16; I.C.A., §§ 33-701 — 33-718; am. 1945, ch. 42, § 1, p. 55; am. 1949, ch. 16, § 1,

p. 18; am. 1951, ch. 89, § 1, p. 161; am. 1955, ch. 122, § 1, p. 249; am. 1963, ch. 358, § 2, p. 1026; am. 1965, ch. 263, § 1, p. 668; am. 1966 (3rd E.S.), ch. 5, § 25, p. 16, was repealed by S.L. 1970, ch. 140, § 209. For present law, see § 34-404 et seq.

CHAPTER 9

BALLOTS

SECTION.

- 34-901. Official election stamp.
 34-902. County commissioners to provide sufficient ballots and ballot boxes for each polling place at all elections.
 34-903. Secretary of state to prescribe form and contents of all ballots and related documents.
 34-903A. Name on ballot.
 34-904. Primary election ballots.
 34-904A. [Repealed.]
 34-905. Nonpartisan ballots for election of justices of supreme court and district judges.
 34-905A. Nonpartisan ballots for election of highway district commissioners — Plurality required for election.
 34-906. Ballots for general elections.

SECTION.

- 34-907 — 34-907B. [Repealed.]
 34-908. Each ballot to carry official election stamp on outside — Marking of ballot by voter.
 34-909. General election sample ballots forwarded to counties by secretary of state.
 34-910. Duty of county clerk to furnish sufficient ballots to each voting precinct — Record of number of ballots printed and furnished.
 34-911. County clerk to prepare full instructions for the guidance of voters at elections.
 34-912. Procedure for correction of ballots when vacancy occurs after printing — Notice.
 34-913, 34-914. [Repealed.]

34-901. Official election stamp. — The county clerk shall provide for an official election stamp of such character or device, and of such material as the board of county commissioners may select. Each stamp shall have upon its face the date and year of the election in which it is used and the words "Official Election Ballot." In the event such stamp is lost, destroyed or unavailable upon election day, the distributing clerk shall initial each ballot and write "stamped" upon the ballot in the appropriate place. [1970, ch. 140, § 121, p. 351.]

STATUTORY NOTES

Cross References. — Ballots, printing, form, § 34-2414.

Penalties for tampering with ballots or defacing supplies, §§ 18-2316, 18-2317.

Voting by absentee ballot, § 34-1001 et seq.

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 210:

34-901. (1890-1891, p. 57, § 53; reen. 1899, p. 33, § 44; reen. R.C. & C.L., § 402; C.S., § 570; I.C.A., § 33-801; am. 1944 (1st E.S.), ch. 2, § 8, p. 4; am. 1949, ch. 86, § 3, p. 149.)

34-902. (1890-1891, p. 57, § 54; reen. 1899, p. 38, § 45; reen. R.C. & C.L., § 403; C.S., § 571; I.C.A., § 33-802; am. 1951, ch. 34, § 1, p. 45.)

34-903. (1890-1891, p. 57, §§ 55, 56; reen. 1899, p. 33, §§ 46, 47; reen. R.C. & C.L., § 404; C.S., § 572; I.C.A., § 33-803; am. 1966 (3rd E.S.), ch. 5, § 26, p. 16.)

34-904. (1890-1891, p. 57, § 57; reen. 1899, p. 33, § 48; am. 1903, p. 354, § 1; am. 1905, p. 311, § 1; am. R.C., § 405; am. 1913, ch. 100, p. 416; am. 1917, ch. 93, § 1, p. 318; reen. C.L., § 405; am. 1919, ch. 169, p. 540; C.S., § 573; I.C.A., § 33-804; am. 1941, ch. 49, § 1; p. 104; am. 1944 (1st E.S.), ch. 2, § 9, p. 4; am. 1949, ch. 141, § 1, p. 247; am. 1951, ch. 23, § 1, p. 34; am. 1953, ch. 54, § 1, p. 73; am. 1967, ch. 360, § 9, p. 1011.)

34-902. County commissioners to provide sufficient ballots and ballot boxes for each polling place at all elections. — At its regular meeting in March, the board of county commissioners shall authorize that a suitable number of ballots be printed for each polling place. The county clerk shall cause such ballots to be printed upon receiving final instructions from

the secretary of state, and the cost shall be paid from the county treasury. The board of county commissioners shall authorize the printing of ballots in the same manner for special elections when such special election is ordered by the governor or provided by law.

The board of county commissioners shall also provide a suitable number of ballot boxes for each polling place within the county, and shall have complete authority to determine the specifications for such ballot boxes. [1970, ch. 140, § 122, p. 351; am. 1975, ch. 174, § 14, p. 469; am. 1979, ch. 309, § 10, p. 833.]

STATUTORY NOTES

Cross References. — Printed matter and supplies for the proper use of voting machines and vote tally systems, § 34-2414.

Prior Laws. — Former § 34-902 was repealed. See Prior Laws, § 34-901.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Ballots as evidence.
Duties of commissioners.

Ballots as Evidence.

In order to introduce ballots in evidence in election contest, party offering them must show that the law governing protection and preservation of ballots has been complied with. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

paring official ballots acts ministerially only, and must place upon the ballot in the proper column names of all candidates whose nominations have been duly certified to him. *Miller v. Davenport*, 8 Idaho 593, 70 P. 610 (1902); *Fuller v. Corey*, 18 Idaho 558, 110 P. 1035 (1910).

Duties of Commissioners.

County auditor (now commissioner) in pre-

34-903. Secretary of state to prescribe form and contents of all ballots and related documents. — (1) The secretary of state shall, in a manner consistent with the election laws of this state, prescribe the form for all ballots, absentee ballots, diagrams, sample ballots, ballot labels, voting machine labels or booklets, certificates, notices, declarations of candidacy, affidavits of all types, lists, applications, poll books, tally sheets, registers, rosters, statements and abstracts if required by the election laws of this state.

(2) The secretary of state shall prescribe the arrangement of the matter to be printed on each kind of ballot and label, including:

(a) The placement and listing of all offices, candidates and issues upon which voting is statewide, which shall be uniform throughout the state.

(b) The listing of all other candidates required to file with him, and the order of listing all offices and issues upon which voting is not statewide.

(3) The names of candidates for legislative or special district offices shall be printed only on the ballots and ballot labels furnished to voters of such district.

(4) The names of all candidates which appear on any election ballot shall be rotated in the manner determined by the secretary of state.

(5) No candidate's name may appear on a ballot for more than one (1) office, except that a candidate for precinct committeeman may seek one (1) additional office upon the same ballot. The provisions of this subsection shall not apply to the election of electors of president and vice-president of the United States. [1970, ch. 140, § 123, p. 351; am. 1971, ch. 189, § 1, p. 870; am. 1987, ch. 313, § 1, p. 656.]

STATUTORY NOTES

Cross References. — Preparation of ballots and ballot labels, §§ 34-713, 34-904, 34-911, 34-2418, 34-2419 and 34-2425.

Prior Laws. — Former § 34-903 was repealed. See Prior Laws, § 34-901.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

One ticket only.
Write-in votes.

One Ticket Only.

Only one ticket under the recognized name of a political party may be placed upon the official ballot. *Williams v. Lewis*, 6 Idaho 184, 54 P. 619, overruled on other grounds, *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904).

quired to be counted along with write-in votes inserted in blank column to determine total votes cast for write-in candidates for office. *McCall v. Martin*, 74 Idaho 277, 262 P.2d 787 (1953).

Write-in Votes.

Write-in votes for office inserted in blank space under Republican column were re-

34-903A. Name on ballot. — Should it appear to the secretary of state or county clerk that a person has filed as a candidate and that such person has changed their name and has changed their name to words that convey or attempt to convey a political message, the secretary of state or county clerk shall make an inquiry to determine: (i) if such person has changed their name; and (ii) if such name contains words that convey a political message to voters on the ballot; and (iii) if an explanation on the ballot would clarify the ballot and would assist in eliminating voter confusion. If the secretary of state or county clerk finds affirmatively that all three (3) criteria have been met, the secretary of state or county clerk shall be required to note on the ballot immediately following the name that appears to be a political proposition the following statement in parentheses: (A person, formerly known as), inserting in the blank within the parentheses the name by which the candidate who changed their name was formerly known. [I.C., § 34-903A, as added by 2008, ch. 408, § 2, p. 1124.]

STATUTORY NOTES

Compiler's Notes. — Section 1 of S.L. 2008, ch. 408 provided "LEGISLATIVE FINDINGS. The Legislature finds that:

"(1) The state has a compelling state interest in the matters described herein;

"(2) The protection of the integrity and fairness of the ballot is integral to the protection of the right to vote;

"(3) Ballots serve primarily to elect candidates not as fora for political expression;

"(4) Neither the state, a political party, nor a candidate has the right to send a particularized political message on the ballot;

"(5) Permitting candidates to convey or place a political message on the ballot by use of a changed name without explanation undermines ballot integrity by transforming the ballot from a means of choosing candidates to

a billboard for political advertising;

"(6) To mix names of candidates with apparent political propositions is confusing to voters and will directly affect the integrity of the ballot, cause spoiled ballots due to double votes for the same office and potentially produce a result not intended by voters;

"(7) It is necessary for the purpose of eliminating confusion to clarify the ballot and to advise voters that the vote to be cast is for a person and not a political proposition; and

"(8) As a result of all of the above, it is appropriate to clarify the ballot with an explanation that voters are casting a vote for a person and not a political proposition."

Effective Dates. — Section 3 of S.L. 2008, ch. 408 declared an emergency. Approved April 11, 2008.

34-904. Primary election ballots. — There shall be a single primary election ballot on which the complete ticket of each political party shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. Each political ticket shall be separated from the others by a perforated line that will enable the elector to detach the ticket of the political party voted from those remaining. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design the primary election ballot to allow for write-in candidates under each office title.

The office titles shall be listed in order beginning with the highest federal office and ending with precinct offices. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only. [1970, ch. 140, § 124, p. 351; am. 1971, ch. 189, § 2, p. 870; am. S.L. 1972, ch. 130, § 1, p. 259; am. 1983, ch. 213, § 10, p. 590; am. 2001, ch. 272, § 2, p. 993.]

STATUTORY NOTES

Cross References. — No write-ins shall be allowed for judicial office, § 34-702.

Preparation and distribution of sample ballots, § 34-2425.

Prior Laws. — Former § 34-904 was re-

pealed. See Prior Laws, § 34-901.

Effective Dates. — Section 11 of S.L. 1983, ch. 213 declared an emergency. Approved April 13, 1983.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

34-904A. Provision for legislative and representative districts on ballot. [Repealed.]

STATUTORY NOTES

Prior Laws. — Former § 34-904A, which comprised S.L. 1965 (E.S., ch. 1, § 10, p. 5, was repealed by S.L. 1966 (3rd E.S.), ch. 5, § 28.

Compiler's Notes. — This section, which comprised S.L. 1966 (3rd E.S.), ch. 5, § 28; am. 1967, ch. 360, § 10, p. 1011, was repealed by S.L. 1970, ch. 140, § 210.

34-905. Nonpartisan ballots for election of justices of supreme court and district judges. — There shall be a single nonpartisan ballot for the election of justices of the supreme court and district judges. The names of all candidates for each office shall be listed under the proper office title by the secretary of state. A similar ballot shall be prepared for any general election, whenever it shall be necessary to conduct an election for judicial office.

The ballot for each judicial office shall contain the words: "To succeed (Judge, Justice)," inserting the name of the[,] or of each[,] incumbent candidate for re-election, or retiring judge or justice as the case may be, whose successor is to be elected in that year followed by the words: "Vote for One," followed by the names of the candidates for that particular office. [1970, ch. 140, § 125, p. 351; am. 1970, ch. 231, § 5, p. 643; am. 1971 (E.S.), ch. 9, § 8, p. 14.]

STATUTORY NOTES

Cross References. — No write-ins shall be allowed for judicial office, § 34-702.

Prior Laws. — Former § 34-905, which comprised 1927, ch. 77, § 1, p. 96; I.C.A., § 33-805; am. 1966 (3rd E.S.), ch. 5, § 29, p.

16, was repealed by S.L. 1970, ch. 140, § 210.

Compiler's Notes. — Commas were bracketed into the last paragraph of this section by the compiler to make the section more readable.

34-905A. Nonpartisan ballots for election of highway district commissioners — Plurality required for election. — There shall be a single nonpartisan ballot for the election of highway district commissioners in each highway district. The ballot shall designate the highway district commissioners subdistrict and the names of all candidates for that office shall be listed thereon. The ballot shall also contain the words: "Vote for One," followed by the names of the candidates for the office. The candidate with the most votes shall be declared the successful candidate. [I.C., § 34-905A, as added by S.L. 1972, ch. 345, § 2, p. 1013.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1972, ch. 345 provided the act should take effect on and after July 1, 1972.

34-906. Ballots for general elections. — There shall be a single general election ballot on which the complete ticket of each political party shall be printed. Each political party ticket shall include that party's nominee for each particular office. The secretary of state shall design the general election ballot to allow for write-in candidates under each office title.

The office titles shall be listed in order beginning with the highest federal office. The secretary of state has the discretion and authority to arrange the above classifications of offices as provided by law.

At any general election at which the electors are to vote upon constitutional amendments or other issues, the secretary of state shall provide separate general election ballot forms on which such amendments and issues shall be printed. [1970, ch. 140, § 126, p. 351; am. 1971, ch. 189, § 3, p. 870; am. 1977, ch. 12, § 1, p. 24.]

STATUTORY NOTES

Prior Laws. — Former § 34-906, which p. 414, was repealed by S.L. 1970, ch. 140, comprised I.C.A., § 33-805-A, as added by § 210. 1933, ch. 36, § 1, p. 48; am. 1955, ch. 192, § 1,

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

34-907. Limitation of ballot access for multi-term incumbents.
[Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised Init. Measure 1994, No. 2, § 2, p. 1371, was repealed by S.L. 2002, ch. 1, § 1.

34-907A. Information on Legislators' support for Congressional Term Limits Amendment. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised Init. Measure 1997, No. 4, § 2, was repealed by S.L. 2007, ch. 202, § 3.

34-907B. Term Limits Pledge. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which 1, sec. 2, p. 1189, was repealed by S.L. 2007, comprised 34-907B, Init. Measure 1998, No. ch. 202, § 3.

34-908. Each ballot to carry official election stamp on outside — Marking of ballot by voter. — Every ballot used at any primary, general or special election shall be stamped on the outside with the official election stamp before it is given to the voter. At this time the election official distributing the ballots shall give the voter instructions in regard to folding the ballot after he has voted.

The voter shall mark his ballot with a cross (X) or other mark sufficient to show his intent in the place provided after the name of the candidate for whom he intends to vote for each office.

If a person votes by writing the name of a candidate on the ballot, such act shall constitute a vote for the person's name who appears without the necessity of placing a mark after the name written on the ballot, unless such a mark is required by a vote tally system. [1970, ch. 140, § 128, p. 351; am. 1988, ch. 293, § 1, p. 932.]

STATUTORY NOTES

Cross References. — Official election stamp, § 34-901.

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 210:

34-908. (1890-91, p. 57, § 59; reen. 1899, p. 33, § 50; reen. R.C. & C.L., § 407; C.S., § 575; I.C.A., § 33-807.)

34-909. (1890-91, p. 57, § 60; reen. 1899, p. 33, § 51; reen. R.C. & C.L., § 408; C.S., § 576; I.C.A., § 33-808.)

34-910. (R.C., § 409; am. 1917, ch. 93, § 3,

p. 322; reen. C.L., § 409; C.S., § 577; I.C.A., § 33-809.)

34-911. (1890-1891, p. 57, § 62; reen. 1899, p. 33, § 53; reen. R.C., § 410; am. 1913, ch. 95, p. 384; reen. C.L., § 410; C.S., § 578; I.C.A., § 33-810.)

34-912. (1890-1891, p. 57, § 63; reen. 1899, p. 33, § 54; reen. R.C. & C.L., § 411; C.S., § 579; I.C.A., § 33-811.)

Effective Dates. — Section 2 of S.L. 1988, ch. 293 declared an emergency. Approved March 31, 1988.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

34-909. General election sample ballots forwarded to counties by secretary of state. — The secretary of state, not later than September 7, shall prepare the necessary general election sample ballots for the various counties and forward them to the several county clerks. The secretary of state shall place the names of the candidates for all federal, state and district offices on the sample ballots, and by not later than the tenth day prior to the general election shall certify the names of candidates who have been appointed by central committees to fill vacancies as provided by section 34-715, Idaho Code. [1970, ch. 140, § 199, p. 351; am. 1976, ch. 60, § 12, p. 200; am. 1984, ch. 131, § 5, p. 305; am. 1985, ch. 42, § 6, p. 87.]

STATUTORY NOTES

Prior Laws. — Former § 34-909 was repealed. See Prior Laws, § 34-908.

Effective Dates. — Section 13 of S.L. 1976, ch. 60 declared an emergency. Approved March 10, 1976.

Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

34-910. Duty of county clerk to furnish sufficient ballots to each voting precinct — Record of number of ballots printed and furnished. — It shall be the duty of the county clerk to furnish and cause to be delivered a sufficient number of election ballots to the judges of elections of each voting precinct. The ballots shall be delivered to the polling place within the precinct on or before the opening of the polls for the election together with the official stamp and ink pad in sealed packages. Upon delivery of the ballots and supplies, the chief judge of elections must return a written receipt to the county clerk.

The county clerk shall keep a record of the number of ballots printed and furnished to each polling place within the county and preserve the same for one (1) year. [1970, ch. 140, § 129, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-910 was repealed. See Prior Laws, § 34-908.

34-911. County clerk to prepare full instructions for the guidance of voters at elections. — The county clerk shall prepare full instructions for the guidance of voters at such elections, as to obtaining ballots, as to the manner of marking them, and as to obtaining new tickets in place of those spoiled, and provide sample ballots. The form and manner of display of the above mentioned instructions shall be prescribed by the secretary of state and be uniform throughout the state. [1970, ch. 140, § 130, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-911 was repealed. See Prior Laws, § 34-908.

34-912. Procedure for correction of ballots when vacancy occurs after printing — Notice. — When any vacancy occurs after the printing of the ballots and is filled as provided by law, the county clerk shall thereupon have printed a sufficient number of stickers containing the name of the candidate designated to fill the vacancy and shall deliver them to the judges of elections of the precincts interested therein.

The distributing clerk shall affix such stickers on the ballot before it is given to the elector. The sticker shall be placed over the name of the previous candidate. If the vacancy occurs after the deadline for filling the same, the distributing clerk shall cross the name of such candidate off the ballot and no votes shall be cast for the candidate. The county clerk shall notify the precincts of this authorization as soon as a vacancy occurs. [1970, ch. 140, § 131, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-912 was repealed. See Prior Laws, § 34-908.

34-913, 34-914. Delivery of supplies — Instruction cards and sample ballots. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, §§ 412, 413; C.S., §§ 580, 581; I.C.A., §§ 33-812, 33-813), were repealed by S.L. 1970, ch. 140, § 210.
which comprised (1890-1891, p. 57, §§ 64, 65; reen. 1899, p. 33, §§ 55, 56; reen. R.C. & C.L.,

CHAPTER 10

ABSENTEE VOTING

SECTION.

34-1001. Voting by absentee ballot authorized.
34-1002. Application for absentee ballot.
34-1002A. [Repealed.]
34-1003. Issuance of absentee ballot.
34-1004. Marking and folding of absentee ballot — Affidavit.
34-1005. Return of absentee ballot.
34-1006. County clerks shall provide one or more "absent electors' voting place."

SECTION.

34-1007. Transmission of absentee ballots to polls.
34-1008. Deposit of absentee ballots.
34-1009. Challenging absentee elector's vote.
34-1010. Rejection of defective ballots.
34-1011. County clerk's record of applications for absent elector's ballots.
34-1012 — 34-1027. [Repealed.]

34-1001. Voting by absentee ballot authorized. — Any registered elector of the state of Idaho may vote at any election by absentee ballot as herein provided. [1970, ch. 140, § 162, p. 351.]

STATUTORY NOTES

Cross References. — Absentee voting by machine or paper ballot, § 34-2423.
Penalties for violation of election laws, § 18-2301 et seq.

Prior Laws. — Former §§ 34-1001 and 34-1002, which comprised 1890-1891, p. 57, §§ 67, 68; reen. 1899, p. 33, §§ 58, 59; reen. R.C. & C.L., §§ 414, 415; C.S., §§ 582, 583; I.C.A., §§ 33-901, 33-902; am. 1951, ch. 10, § 1, p. 19, were repealed by S.L. 1970, ch. 140, § 211.

34-1002. Application for absentee ballot. — Any registered elector may make written application to the county clerk, or other proper officer charged by law with the duty of issuing official ballots for such election, for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address, county, and address to which such ballot shall be forwarded.

The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be received by the county clerk not later than 5:00 p.m. on the sixth day before the election. An application for in person absentee voting at the absent elector's polling place described in section 34-1006, Idaho Code, shall be received by the county clerk not later than 5:00 p.m. on the day before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated polling place on the day of election because of an emergency situation which rendered him physically unable, he may nevertheless apply

for an absent elector's ballot on the day of election by notifying the county clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the closing of the polls.

A person may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff, et seq.). A properly executed federal postcard application (F.P.C.A.), shall be considered as a request for an absent elector's ballot through the next two (2) regularly scheduled general elections for federal office following receipt of the application. The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

The county clerk shall, not later than seventy-five (75) days after the date of each general election, submit a report to the secretary of state containing information concerning absentee voters as required by federal law. [1970, ch. 140, § 163, p. 351; am. 1972, ch. 157, § 1, p. 349; am. 1973, ch. 304, § 7, p. 646; am. 1976, ch. 353, § 2, p. 1166; am. 1987, ch. 167, § 1, p. 327; am. 1994, ch. 122, § 2, p. 271; am. 1995, ch. 215, § 12, p. 747; am. 2002, ch. 236, § 1, p. 707; am. 2003, ch. 48, § 11, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 34-1002 was repealed. See Prior Laws, § 34-1001.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 4 of S.L. 2002, ch. 236 declared an emergency. Approved March 22, 2002.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

34-1002A. Classifications for absent elector's ballot. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 34-1002A, as added by 1973, ch. 304, § 8, p. 646; am. 1976, ch. 353,

§ 3, p. 1166, was repealed by S.L. 1994, ch. 122, § 3, effective July 1, 1994.

34-1003. Issuance of absentee ballot. — Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of his office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, he shall arrange for the applicant to vote by absent elector's ballot. The absentee ballot may be delivered to the absent elector in the office of the county clerk, by postage prepaid mail or by other appropriate means, including use of a facsimile machine. A political party may supply a witness to accompany the clerk in the personal delivery of an absentee ballot. If the political party desires to supply a witness it shall be the duty of the political party to supply the names of such witnesses to the clerk no later than forty-five (45) days prior to the election. The clerk shall

notify such witnesses of the date and approximate hour the clerk or deputy clerk intends to deliver the ballot.

A candidate for public office or a spouse of a candidate for public office shall not be a witness in the personal delivery of absentee ballots.

An elector physically unable to mark his own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of his own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner. [1970, ch. 140, § 164, p. 351; am. 1973, ch. 304, § 9, p. 646; am. 1975, ch. 66, § 1, p. 132; am. 1984, ch. 131, § 6, p. 305; am. 1993, ch. 100, § 1, p. 253; am. 1994, ch. 122, § 4, p. 271; am. 1996, ch. 74, § 1, p. 238.]

STATUTORY NOTES

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 11:

34-1003. (1890-1891, p. 57, § 69; reen. 1899, p. 33, § 60; reen. R.C. & C.L., § 416; C.S., § 584; I.C.A., § 33-903.)

34-1004. (1890-1891, p. 57, § 70; reen. 1899, p. 33, § 61; reen. R.C. & C.L., § 417; C.S., § 585; I.C.A., § 33-904.)

34-1005. (1890-1891, p. 57, § 73; reen. 1899, p. 33, § 64; compiled and reen. R.C. & C.L., § 418; C.S., § 586; I.C.A., § 33-905.)

34-1006. (1890-1891, p. 57, § 74; reen. R.C. & C.L., § 419; C.S., § 587; I.C.A., § 33-906.)

34-1007. (1890-1891, p. 57, § 75; reen. 1899, p. 33, § 66; am. R.C. & C.L., § 420; C.S., § 588; I.C.A., § 33-907.)

34-1008. (1890-1891, p. 57, § 85; reen. 1899, p. 33, § 76; reen. R.C. & C.L., § 421; C.S., § 589; I.C.A., § 33-908; am. 1957, ch. 220, § 1, p. 499.)

34-1009. (1890-1891, p. 57, § 81; reen. 1899, p. 33, § 72; reen. R.C. & C.L., § 422;

C.S., § 590; I.C.A., §§ 33-909.)

34-1010. (1890-1891, p. 57, § 77; reen. 1899, p. 33, § 68; reen. R.C. & C.L., § 423; C.S., § 591; I.C.A., § 33-910.)

34-1011. (1890-1891, p. 57, § 78; am. 1895, p. 91, § 4; reen. 1899, p. 33, § 69; compiled and reen. R.C., § 424; am. 1917, ch. 93, § 4, p. 323; reen. C.L., § 424; C.S., § 592; I.C.A., § 33-911; am. 1951, ch. 208, § 1, p. 435; am. 1966 (3rd E.S.), ch. 5, § 31, p. 16.)

34-1026. (1890-1891, p. 57, § 96; reen. 1899, p. 33, § 87; reen. R.C. & C.L., § 437; C.S., § 607; I.C.A., § 33-926.)

34-1027. (1890-1891, p. 57, § 80; reen. 1899, p. 33, § 71; reen. R.C. & C.L., § 438; C.S., § 608; I.C.A., § 33-927.)

Effective Dates. — Section 2 of S.L. 1975, ch. 66 declared an emergency. Approved March 18, 1975.

Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 4 of S.L. 1996, ch. 74 declared an emergency. Approved March 6, 1996.

34-1004. Marking and folding of absentee ballot — Affidavit. — Upon receipt of the absent elector's ballot the elector shall thereupon mark and fold the ballot so as to conceal the marking, deposit it in the ballot envelope and seal the envelope securely. In the event an election requires a perforated ballot, the unvoted portion must be deposited in the unvoted ballot envelope and sealed. The ballot envelopes must then be deposited in the return envelope and sealed securely.

The elector shall then execute an affidavit on the back of the return envelope in the form prescribed, provided however, that such affidavit need not be notarized. [1970, ch. 140, § 165, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1004 was repealed. See Prior Laws, § 34-1003.

34-1005. Return of absentee ballot. — The return envelope shall be mailed or delivered to the officer who issued the same; provided, that an absentee ballot must be received by the issuing officer by 8:00 p.m. on the day of election before such ballot may be counted.

Upon receipt of an absent elector's ballot the county clerk of the county wherein such elector resides shall verify the authenticity of the affidavit and shall write or stamp upon the envelope containing the same, the date and hour such envelope was received in his office. He shall safely keep and preserve all absent electors' ballots unopened until the time prescribed for delivery to the judges in accordance with this act. [1970, ch. 140, § 166, p. 351; am. 1972, ch. 157, § 2, p. 349; am. 1995, ch. 215, § 13, p. 747; am. 2007, ch. 202, § 4, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 34-1005 was repealed. See Prior Laws, § 34-1003.

Amendments. — The 2007 amendment, by ch. 202, in the first sentence in the last paragraph, deleted "and, if the ballot was delivered in person, the name and address of the person delivering the same" from the end.

Compiler's Notes. — The words "this act" refer to S.L. 1970, Chapter 140, compiled throughout Title 34 of the Idaho Code.

Effective Dates. — Section 3 of S.L. 1972, ch. 157 declared an emergency. Approved March 17, 1972.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Delivery of ballots to judges.
Writ of mandate.

Delivery of Ballots to Judges.

Absentee ballots must be delivered to, and be opened by, the election judges prior to the close of the polls on the day of the election. *Burge v. Tibor*, 88 Idaho 149, 397 P.2d 235 (1964).

were not received by county auditor until the day after the election, as they could not have been delivered to election judges before the close of the polls, as required. *Burge v. Tibor*, 88 Idaho 149, 397 P.2d 235 (1964).

Writ of Mandate.

Writ of mandate to compel count of absentee ballots must be denied, where the ballots

34-1006. County clerks shall provide one or more "absent electors' voting place." — Each county clerk shall provide one (1) or more "absent electors' polling place(s)" as determined necessary by each county. Each polling place shall be provided with voting booths and other necessary supplies as provided by law. Electioneering is prohibited at an "absent electors' polling place" as provided in section 18-2318, Idaho Code. [1970, ch. 140, § 167, p. 351; am. 1994, ch. 21, § 1, p. 36; am. 1998, ch. 163, § 1, p. 551.]

STATUTORY NOTES

Prior Laws. — Former § 34-1006 was repealed. See Prior Laws, § 34-1003.

34-1007. Transmission of absentee ballots to polls. — On receipt of such absent elector's ballot or ballots, the officer receiving them shall forthwith enclose the same, unopened in a carrier envelope endorsed with the name and official title of such officer and the words: "absent electors' ballot to be opened only at the polls." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which the elector resides and shall deliver the ballot or ballots to the judges with such official ballots.

In those counties which count ballots at a central location, absentee ballots that are received may, in the discretion of the county clerk, be retained in a secure place in the clerk's office and such ballots shall be added to the precinct returns at the time of ballot tabulation. The clerk shall deliver to the polls a list of those absentee ballots received to record in the official poll book that the elector has voted. [1970, ch. 140, § 168, p. 351; am. 2002, ch. 236, § 2, p. 707; am. 2007, ch. 202, § 5, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 34-1007 was repealed. See Prior Laws, § 34-1003.

Amendments. — The 2007 amendment, by ch. 202, in the last paragraph, deleted "on election day" following "received" in the first

sentence, and added the last sentence.

Effective Dates. — Section 4 of S.L. 2002, ch. 236 declared an emergency. Approved March 22, 2002.

34-1008. Deposit of absentee ballots. — Between the opening and closing of the polls on such election day the judges of election of such precinct shall open the carrier envelope only, announce the absent elector's name, and in the event they find such applicant to be a duly registered elector of the precinct and that he has not heretofore voted at the election, they shall open the return envelope and remove the ballot envelopes and deposit the same in the proper ballot boxes and cause the absent elector's name to be entered on the poll books the same as though he had been present and voted in person. The ballot envelope shall not be opened until the ballots are counted. [1970, ch. 140, § 169, p. 351; am. 1995, ch. 215, § 14, p. 747.]

STATUTORY NOTES

Prior Laws. — Former § 34-1008 was repealed. See Prior Laws, § 34-1003.

Effective Dates. — Section 16 of S.L.

1995, ch. 215 declared an emergency. Approved March 17, 1995.

34-1009. Challenging absentee elector's vote. — The vote of any absent elector may be challenged in the same manner as other votes are challenged and the receiving judges shall have power and authority to determine the legality of such ballot. If the challenge be sustained, or if the

receiving judges determine, that the affidavit accompanying the absent elector's ballot is insufficient, or that the elector is not a qualified registered elector the envelope containing the ballot of such elector shall not be opened and the judges shall endorse on the back of the envelope the reason therefor. If an absent elector's envelope contains more than one (1) marked ballot of any one (1) kind, none of such ballots shall be counted and the judges shall make notations on the back of the ballots the reason therefor. Judges of election shall certify in their returns the number of absent electors' ballots cast and counted and the number of such ballots rejected. [1970, ch. 140, § 170, p. 351; am. 2004, ch. 248, § 1, p. 714.]

STATUTORY NOTES

Prior Laws. — Former § 34-1009 was repealed. See Prior Laws, § 34-1003. ch. 248 declared an emergency. Approved March 23, 2004.

Effective Dates. — Section 2 of S.L. 2004,

34-1010. Rejection of defective ballots. — All absent electors' identification envelopes, ballot stubs and absent electors' ballots rejected by the judges in accordance with the provisions of this act shall be returned to the county clerk. All absent electors' ballots received by the county clerk after 8:00 p.m. on the day of the general, primary or special election, together with the rejected absent electors' ballots returned by the judges of election as provided in this section, shall remain in the sealed identification envelopes and be handled in the manner provided for other spoiled ballots. [1970, ch. 140, § 171, p. 351; am. 1973, ch. 304, § 10, p. 646.]

STATUTORY NOTES

Prior Laws. — Former § 34-1010 was repealed. See Prior Laws, § 34-1003.

Compiler's Notes. — For words "this act" see Compiler's Notes, § 34-1005.

34-1011. County clerk's record of applications for absent elector's ballots. — The county clerk shall keep a record in his office containing a list of names and precinct numbers of electors making application for absent elector's ballots, together with the date on which such application was made, the date on which such absent elector's ballot was returned. If an absent elector's ballot is not returned or if it be rejected and not counted, such fact shall be noted on the record. Such record shall be open to public inspection under proper regulations. [1970, ch. 140, § 172, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1011 was repealed. See Prior Laws, § 34-1003.

34-1012 — 34-1027. Ballots — Officers not to divulge information — Challenging voters — Oath — Disposal of stubs — Poll lists. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 1970, ch. 140, § 11:

34-1012. (1890-1891, p. 57, § 79; reen. 1899, p. 33, § 70; reen. R.C. & C.L., § 425; C.S., § 593; I.C.A., § 33-912.)

34-1013. (1890-1891, p. 57, § 82; reen. 1899, p. 33, § 73; reen. R.C. & C.L., § 426; C.S., § 594; I.C.A., § 33-913.)

34-1014. (1890-1891, p. 57, § 83; reen. 1899, p. 33, § 74; reen. R.C. & C.L., § 426a; C.S., § 595; I.C.A., § 33-914.)

34-1015. (1890-1891, p. 57, § 84; reen. 1899, p. 33, § 75; am. R.C. & C.L., § 427; C.S., § 596; I.C.A., § 33-915.)

34-1016. (1890-1891, p. 57, § 86; reen. 1899, p. 33, § 77; reen. R.C., § 528; am. 1913, ch. 92, § 19, p. 379; am. C.L., § 428; C.S., § 597; I.C.A., § 33-916.)

34-1017. (1913, ch. 92, § 12, p. 376; reen. C.L., § 428a; C.S., § 598; I.C.A., § 33-917.)

34-1018. (1890-1891, p. 57, § 87; reen. 1899, p. 33, § 78; reen. R.C. & C.L., § 429; C.S., § 599; I.C.A., § 33-918.)

34-1019. (1890-1891, p. 57, § 88; reen. 1899, p. 33, § 79; reen. R.C. & C.L., § 430; C.S., § 600; I.C.A., § 33-919.)

34-1020. (1890-1891, p. 57, § 90; reen. 1899, p. 33, § 81; reen. R.C. & C.L., § 431; C.S., § 601; I.C.A., § 33-920.)

34-1021. (1890-1891, p. 57, § 89; am. 1895, p. 91, § 6; reen. 1899, p. 33, § 80; am. R.C. & C.L., § 432; C.S., § 602; I.C.A., § 33-921; am. 1966 (3rd E.S.), ch. 5, § 32, p. 16; am. 1967, ch. 360, § 11, p. 1011.)

34-1022. (1890-1891, p. 57, § 91; am. 1895, p. 91, § 5; reen. 1899, p. 33, § 82; reen. R.C. & C.L., § 433; C.S., § 603; I.C.A., § 33-922; am. 1966 (3rd E.S.), ch. 5, § 33, p. 16.)

34-1023. (1890-1891, p. 57, § 93; reen. 1899, p. 33, § 84; reen. R.C. & C.L., § 434; C.S., § 604; I.C.A., § 33-923.)

34-1024. (1890-1891, p. 57, § 94; reen. 1899, p. 33, § 85; reen. R.C. & C.L., § 435; C.S., § 605; I.C.A., § 33-924.)

34-1025. (1890-1891, p. 57, §§ 92, 95; reen. 1899, p. 33, §§ 83, 86; compiled and reen. R.C. & C.L., § 436; C.S., § 606; I.C.A., § 33-925.)

34-1026. (1890-1891, p. 57, § 96; reen. 1899, p. 33, § 87; reen. R.C. & C.L., § 437; C.S., § 607; I.C.A., § 33-926.)

34-1027. (1890-1891, p. 57, § 80; reen. 1899, p. 33, § 71; reen. R.C. & C.L., § 438; C.S., § 608; I.C.A., § 33-927.)

CHAPTER 11

CONDUCT OF ELECTIONS

SECTION.

34-1101. Opening and closing of polls.

34-1102. Changing polling place — Proclamation and notice.

34-1103. Opening ballot boxes.

34-1104. Judges may administer oaths — Challenge of voters.

34-1105. Duties of constable.

34-1106. Signing combination election record and poll book — Delivery of ballot to elector.

SECTION.

34-1107. Manner of voting.

34-1108. Assistance to voter.

34-1109. Spoiled ballots.

34-1110. Officers not to divulge information.

34-1111. Challenging voters.

34-1112. Handbook of elector's qualifications.

34-1113 — 34-1129. [Repealed.]

34-1101. Opening and closing of polls. — (1) At all elections conducted pursuant to title 34, Idaho Code, the polls shall be opened at 8:00 A.M. and remain open until all registered electors of that precinct have appeared and voted or until 8:00 P.M. of the same day, whichever comes first. The county clerk, at his option, however, may open the polls in his county at 7:00 A.M. for a primary or general election.

(2) Upon opening the polls, one (1) of the judges shall make the proclamation of the same and thirty (30) minutes before closing the polls a

proclamation shall be made in the same manner. Any elector who is in line at 8:00 P.M. shall be allowed to vote notwithstanding the pronouncement that the polls are closed. [1970, ch. 140, § 173, p. 351; am. 1972, ch. 349, § 1, p. 1033; am. 1973, ch. 304, § 11, p. 646; am. 1993, ch. 313, § 12, p. 1157.]

STATUTORY NOTES

Cross References. — Penalties for violation of election laws, § 18-2301 et seq.

Preparation of polling place, § 34-2415.

Voting by absentee ballot, § 34-1001 et seq.

Voting by machine or vote tally system, § 34-2401 et seq.

Prior Laws. — Former §§ 34-1101 — 34-1129, which comprised 1917, ch. 142, §§ 1-14, p. 453; reen. C.L., §§ 32:1-32:14; C.S., §§ 609-622; am. 1923, ch. 57, § 1; am. 1937, ch. 45, §§ 1-6, p. 59; am. 1941, ch. 146, §§ 1,

2, p. 296; am. 1943, ch. 107, §§ 1, 2, p. 208; 1951, ch. 7, §§ 1-15, p. 15; am. 1953, ch. 56, § 1, p. 76; am. 1957, ch. 217, §§ 1-12, p. 468; am. 1959, ch. 77, § 1, p. 176; am. 1959, ch. 78, § 1, p. 176; am. 1965, ch. 189, § 1, p. 397; am. 1966 (3rd E.S.), ch. 5, § 34, p. 16, were repealed by S.L. 1970, ch. 140, § 212.

Effective Dates. — Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

34-1102. Changing polling place — Proclamation and notice. — Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after assembling and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election and the county clerk shall be notified of the change.

Upon adjourning any election, the judges shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment was made from notifying electors of the change of polling place. [1970, ch. 140, § 174, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1102 was repealed. See Prior Laws, § 34-1101.

34-1103. Opening ballot boxes. — In the presence of bystanders the judges of elections shall break the sealed packages of election ballots, official stamp and other supplies.

Before receiving any ballots the judges shall open and exhibit, close and lock the ballot boxes, and thereafter they shall not be removed from the polling place until all ballots are counted. They shall not be opened until the polls are closed unless the precinct is using a duplicate set of ballot boxes. [1970, ch. 140, § 175, p. 351.]

STATUTORY NOTES

Cross References. — Duplicate ballot boxes used for counting during balloting, § 34-1201.

Prior Laws. — Former § 34-1103 was repealed. See Prior Laws, § 34-1101.

34-1104. Judges may administer oaths — Challenge of voters. — Any judge may administer and certify any oath required to be administered

during the progress of an election or challenge any elector. [1970, ch. 140, § 176, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1104 was repealed. See Prior Laws, § 34-1101.

34-1105. Duties of constable. — The judges of election may appoint some capable person to act as election constable during the election, and he shall have the power to make arrests for disturbance of the peace, as provided by law for constables, and he shall allow no one within the voting area except those who go to vote, and shall allow but one elector in a compartment at one time. He shall remain and keep order at the polling place until all of the votes are tallied. [1970, ch. 140, § 177, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1105 was repealed. See Prior Laws, § 34-1101.

34-1106. Signing combination election record and poll book — Delivery of ballot to elector. — (1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.

(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein.

(3) No person shall knowingly sign his name in the combination election record and poll book if his residence address is not within that precinct at the time of signing.

(4) If the residence address of a person contained in the combination election record and poll book is incorrectly given due to an error in preparation of the combination election record and poll book, the judge shall ascertain the correct address and make the necessary correction.

(5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. [1970, ch. 140, § 178, p. 351; am. 1972, ch. 349, § 2, p. 1033.]

STATUTORY NOTES

Prior Laws. — Former § 34-1106 was repealed. See Prior Laws, § 34-1101.

34-1107. Manner of voting. — On receipt of his ballot the elector shall retire to a vacant voting booth and mark his ballot according to the instructions provided by law.

After marking his ballot, the elector shall present himself to the judge at the ballot box and state his name and residence. The elector shall then deposit his ballot in the proper box or hand his ballot to the election judge,

who shall deposit it. The judge shall then record that the elector has voted and proclaim the same in an audible voice. [1970, ch. 140, § 179, p. 351; am. 1971, ch. 129, § 1, p. 510; am. 1972, ch. 349, § 3, p. 1033; am. 1973, ch. 304, § 12, p. 646; am. 2007, ch. 202, § 6, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 34-1107 was repealed. See Prior Laws, § 34-1101.

Amendments. — The 2007 amendment, by ch. 202, deleted the last sentence in the first paragraph, which read: "Before leaving the voting compartment the elector shall fold his ticket so that the official stamp is visible and the face of the ballot is completely inclosed"; and in the last paragraph, in the first sentence, substituted "the judge in charge of the additional copy of the combina-

tion election record and poll book" for "the judge at the ballot box," in the second sentence, inserted "then deposit his ballot in the proper box or" and "who shall deposit it," and deleted the former third sentence, which read: "The judge shall deposit the ballot in the proper box after ascertaining that the ballot is folded correctly."

Effective Dates. — Section 2 of S.L. 1971, ch. 129 declared an emergency. Approved March 16, 1971.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Marking of Ballots.

Where a voter places a cross in the square opposite a blank space on a ballot instead of opposite the name of any candidate, without writing a name in the blank space, his vote for that particular office is void; but where a voter makes a straight mark, instead of a cross, in the square opposite the name of a candidate

for a certain office, such mark is sufficient to indicate his intention to vote for that candidate so that his vote may be counted, unless there is evidence that he used the mark to identify his ballot or for any purpose other than to express his intention. *Harper v. Dotson*, 32 Idaho 616, 187 P. 270 (1920).

34-1108. Assistance to voter. — (1) If any registered elector is unable, due to physical disability or other handicap, to enter the polling place, he may be handed a ballot outside the polling place but within forty (40) feet thereof by one (1) of the election clerks, and in his presence but in a secret manner, mark and return the same to such election officer who shall proceed as provided by law to record the ballot.

(2) If any registered elector, who is unable by reason of physical disability or other handicap to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice or by one (1) of the election clerks. Such clerk or selected person shall mark the ballot in the manner directed by the elector and fold it properly and present it to the elector before leaving the voting compartment or area provided for such purpose. The elector shall then present it to the judge of election in the manner provided above. [1970, ch. 140, § 180, p. 351; am. 1972, ch. 349, § 4, p. 1033; am. 1978, ch. 37, § 1, p. 66.]

STATUTORY NOTES

Cross References. — Physically disabled voters, voting by machine or vote tally system, § 34-2427.

Prior Laws. — Former § 34-1108 was repealed. See Prior Laws, § 34-1101.

34-1109. Spoiled ballots. — No person shall take or remove any ballot from the polling place. If an elector inadvertently or by mistake spoils a ballot, he shall return it folded to the distributing clerk, who shall give him another ballot. The ballot thus returned shall, without examination, be immediately cancelled by writing across the back, or outside of the ballot as folded, the words “spoiled ballot, another issued,” and deposit the spoiled ballot in a box provided for that purpose. [1970, ch. 140, § 181, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1109 was repealed. See Prior Laws, § 34-1101.

34-1110. Officers not to divulge information. — No judge or clerk shall communicate to anyone any information as to the name or number on the registry list of any elector who has not applied for a ballot, or who has not voted at the polling place; and no judge, clerk or other person whomsoever, shall interfere with, or attempt to interfere with, a voter when marking his ballot. No judge, clerk or other person shall, directly or indirectly, attempt to induce any voter to display his ticket after he shall have marked the same, or to make known to any person the name of any candidate for or against whom he may have voted. [1970, ch. 140, § 182, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1110 was repealed. See Prior Laws, § 34-1101.

34-1111. Challenging voters. — In case any person offering to vote is challenged one (1) of the judges must declare the qualifications of an elector to such person. If the person so challenged then declares himself duly qualified, and the challenge is not withdrawn, one (1) of the judges shall then tender him the elector's oath, as prescribed by the secretary of state. No challenged elector shall have the right to vote until he has subscribed to the elector's oath. Upon a challenged elector's subscribing the elector's oath, he shall be entitled to vote. [1970, ch. 140, § 183, p. 351.]

STATUTORY NOTES

Cross References. — Qualifications of voters, § 34-402. **Prior Laws.** — Former § 34-1111 was repealed. See Prior Laws, § 34-1101.

34-1112. Handbook of elector's qualifications. — The secretary of state shall prepare a handbook which sets forth the qualifications of an elector which shall aid the judges of election to determine whether a person is qualified to vote at the election.

A sufficient number of these handbooks shall be transmitted to each county clerk who shall provide each polling place with a sufficient number of copies. [1970, ch. 140, § 184, p. 351; am. 1972, ch. 349, § 5, p. 1033.]

STATUTORY NOTES

Prior Laws. — Former § 34-1112 was repealed. See Prior Laws, § 34-1101.

Effective Dates. — Section 6 of S.L. 1972,

ch. 349 declared an emergency. Approved March 31, 1972.

34-1113 — 34-1129. Purpose, construction, application of act — Ballots and voting. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — Former §§ 34-1101 to 34-1129, which comprised 1917, ch. 142, §§ 1-14, p. 453; reen. C.L., §§ 32:1-32:14; C.S., §§ 609-622; am. 1923, ch. 57, § 1; am. 1937, ch. 45, §§ 1-6, p. 59; am. 1941, ch. 146, §§ 1, 2, p. 296; am. 1943, ch. 107, §§ 1, 2, p.

208; 1951, ch. 7, §§ 1-15, p. 15; am. 1953, ch. 56, § 1, p. 76; am. 1957, ch. 217, §§ 1-12, p. 468; am. 1959, ch. 77, § 1, p. 176; am. 1959, ch. 78, § 1, p. 176; am. 1965, ch. 189, § 1, p. 397; am. 1966 (3rd E.S.), ch. 5, § 34, p. 16, were repealed by S.L. 1970, ch. 140, § 212.

CHAPTER 12

CANVASS OF VOTES

SECTION.

- 34-1201. Canvass of votes.
- 34-1202. Comparison of poll lists and ballots — Void ballots.
- 34-1202A. Void ballot not counted.
- 34-1203. Counting of ballots — Certificates of judges.
- 34-1204. Transmission of supplies to county clerk.
- 34-1205. County board of canvassers — Meetings.
- 34-1206. Board's statement of votes cast.
- 34-1207. Abstracts of returns.
- 34-1208. Certificates of nomination or election.
- 34-1209. Certificates of election to county candidates after general election.
- 34-1210. Tie votes in county elections.

SECTION.

- 34-1211. State board of canvassers — Meetings.
- 34-1212. Examination and certification of county canvasses by state board.
- 34-1213. Certification of canvass of abstracts by board.
- 34-1214. Certificates of nomination or election to federal, state, district or nonpartisan offices after primary.
- 34-1215. Certificates of election to federal, state and district offices after general election.
- 34-1216. Tie votes — In state or district elections.
- 34-1217. Canvassing returns of judicial elections — Certificates of nomination or election.

34-1201. Canvass of votes. — (1) When the polls are closed the judges must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting shall begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed at which time all election personnel shall complete the counting of the ballots. [1970, ch. 140, § 185, p. 351.]

STATUTORY NOTES

Cross References. — Penalties for violations of election laws, § 18-2301 et seq.

Prior Laws. — Former §§ 34-1201 and 34-1202, which comprised 1890-1891, p. 57,

§ 97; reen. 1899, p. 33, § 88; reen. R.C. & C.L., §§ 439, 440; C.S., §§ 623, 624; I.C.A., §§ 33-1101, 33-1102, were repealed by S.L. 1970, ch. 140, § 213.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Counting Write-in Votes.

Write-in votes for office inserted in blank space under Republican column were required to be counted along with write-in votes

inserted in blank column to determine total votes cast for write-in candidates for office. McCall v. Martin, 74 Idaho 277, 262 P.2d 787 (1953).

34-1202. Comparison of poll lists and ballots — Void ballots. —

The counting must commence by comparison of the ballots and the poll lists from the commencement, and a correction of any mistake that may be found therein, until they are found to agree. The ballot box shall be opened and the ballots found therein counted by the judges, unopened and the number of ballots in the box must agree with the number marked in the poll book as having received a ballot, and this number, together with the number of spoiled ballots, must agree with the number of stubs or counterfoils in the books from which the ballots have been taken. If the number of ballots issued does not agree with the number of stubs or counterfoils, the election judges shall have authority to make any decision to correct the situation; but this shall not be construed to allow the judges to void all ballots cast at that polling place.

When duplicate ballot boxes are used in a precinct, the duties herein prescribed shall be done after all of the votes have been tallied. [1970, ch. 140, § 186, p. 351; am. 1995, ch. 215, § 15, p. 747.]

STATUTORY NOTES

Prior Laws. — Former § 34-1202 was repealed. See Prior Laws, § 34-1201.

Effective Dates. — Section 16 of S.L.

1995, ch. 215 declared an emergency. Approved March 17, 1995.

34-1202A. Void ballot not counted. — At any bond election conducted by the state of Idaho, its agencies, institutions, political subdivisions and municipal and quasi-municipal corporations, any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. It is hereby declared that any qualified elector casting such ballot or part of a ballot shall be deemed not to have voted at or participated in such bond election and such ballot or part of a ballot shall not be counted in determining the number of qualified electors voting at or participating in such bond election. [I.C., § 34-1202A, as added by 1978, ch. 51, § 1, p. 96.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 1978, ch. 51 read: "All bond elections conducted by the state of Idaho, its agencies, political subdivisions and municipal and quasi-municipal corporations prior to the effective date of this act, and all proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is

being contested at the time this act takes effect, or any election the legality of which is contested within the period provided by section 34-2001A, Idaho Code."

Section 3 of S.L. 1978, ch. 51 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates. — Section 4 of S.L. 1978, ch. 51 declared an emergency. Approved March 6, 1978.

34-1203. Counting of ballots — Certificates of judges. — The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Following the counting, the judges must post a correct copy of such results at the polling place and a copy transmitted to the county clerk.

In no event shall the results of any count be released to the public until all voting places in the state have closed on election day.

The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in this state. [1970, ch. 140, § 187, p. 351; am. 1981, ch. 109, § 1, p. 163; am. 2003, ch. 48, § 12, p. 181.]

STATUTORY NOTES

Prior Laws. — The following former sections were repealed by S.L. 1970, ch. 140, § 213:

34-1203. (1890-1891, p. 57, § 99; reen. 1899, p. 33, § 90; reen. R.C. & C.L., § 441; C.S., § 625; am. 1925, ch. 73, § 1, p. 107; I.C.A., § 33-1103.)

34-1204. (1890-1891, p. 57, § 100; reen. 1899, p. 33, § 91; am. 1901, p. 291, § 1; am. R.C., § 442; am. 1913, ch. 92, § 20, p. 379; compiled and reen. C.L., § 442; C.S., § 626; I.C.A., § 33-1104; am. 1951, ch. 114, § 1, p. 266; am. 1953, ch. 233, § 4, p. 348.)

34-1205. (1899, p. 372, § 1; reen. R.C. & C.L., § 443; C.S., § 627; I.C.A., § 33-1105.)

34-1206. (1899, p. 372, § 2; reen. R.C., § 444; am. 1913, ch. 24, § 1, p. 94; reen. C.L., § 444; C.S., § 628; I.C.A., § 33-1106.)

34-1207. (1899, p. 372, § 4; am. 1901, p. 16, § 1; reen. R.C. & C.L., § 445; C.S., § 629; I.C.A., § 33-1107.)

34-1208. (1899, p. 372, § 3; reen. R.C. & C.L., § 446; C.S., § 630; I.C.A., § 33-1108.)

34-1209. (1899, p. 372, §§ 5, 6; reen. R.C., § 447; compiled and reen. C.L., § 447; C.S., § 631; I.C.A., § 33-1109.)

34-1210. (1890-1891, p. 57, § 101; reen. 1899, p. 33, § 92; am. R.C., § 448; compiled and reen. C.L., § 448; C.S., § 632; I.C.A., § 33-1110.)

34-1211. (1890-1891, p. 57, § 102; reen. 1899, p. 33, § 93; am. R.C. & C.L., § 449; C.S., § 633; I.C.A., § 33-1111; am. 1966 (3rd E.S.), ch. 5, § 35, p. 16.)

Effective Dates. — Section 16 of S.L.

2003, ch. 48 declared an emergency. Approved March 13, 2003.

34-1204. Transmission of supplies to county clerk. — After the counting of the votes, the judges of the election shall enclose and seal the combination election record and poll book, tally books, all ballot stubs, unused ballot books, and other supplies in a suitable container and deliver them to the county clerk's office. If the office of the county clerk is closed, the articles shall be delivered to the sheriff or one (1) of his deputies who shall deliver them to the county clerk no later than the day after the election. [1970, ch. 140, § 188, p. 351; am. 1972, ch. 193, § 1, p. 480.]

STATUTORY NOTES

Prior Laws. — Former § 34-1204 was repealed. See Prior Laws, § 34-1203.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Care and custody of ballots.
Opening ballot box.
Statute directory.

Care and Custody of Ballots.

There was flagrant disregard of former similar section where ballots and election supplies were taken to, and kept in, office of election judge, which was open to public. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

Opening Ballot Box.

Former similar section applied when returns was properly made and were not returned to judges for correction. Where returns

had been rejected, judges could open ballot box for purpose of correcting the returns. *Davies v. Board of County Comm'rs*, 26 Idaho 450, 143 P. 945 (1914).

Statute Directory.

Statutory provisions relative to keeping ballots after an election are directory only. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

34-1205. County board of canvassers — Meetings. — The county board of commissioners shall be the county board of canvassers and the county clerk shall serve as their secretary for this purpose. The county board of canvassers shall meet within seven (7) days after the primary or presidential preference primary election and within ten (10) days after the general election for the purpose of canvassing the election returns of all precincts within the county. [1970, ch. 140, § 189, p. 351; am. 1972, ch. 193, § 2, p. 480; am. 1975, ch. 174, § 15, p. 469.]

STATUTORY NOTES

Prior Laws. — Former § 34-1205 was repealed. See Prior Laws, § 34-1203.

JUDICIAL DECISIONS**DECISIONS UNDER PRIOR LAW****Authority of Board of Commissioners.**

Board of commissioners, acting as board of canvassers, has no authority to declare any person elected to an office, but must make out the abstracts of votes for each office separately, and deliver them to auditor, whose

duty it is, as auditor and not as clerk of the board, to make out a certificate of election to each of the persons having the highest number of votes. *Cunningham v. George*, 3 Idaho 456, 31 P. 809 (1892).

34-1206. Board's statement of votes cast. — The board shall examine and make a statement of the total number of votes cast for all candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by precinct and the total number of affirmative and negative votes cast for any special question by precinct. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk. [1970, ch. 140, § 190, p. 351.]

STATUTORY NOTES

Cross References. — Canvass of returns of judicial elections, § 34-1217.

Prior Laws. — Former § 34-1206 was repealed. See Prior Laws, § 34-1203.

34-1207. Abstracts of returns. — After the canvass of the votes for each office the board shall cause the county clerk to make abstracts of the returns for each candidate which shall then be signed by each member of the board. The abstracts shall be in a form prescribed by the secretary of state and be uniform throughout the state.

The county clerk, by registered mail, shall forward to the secretary of state the abstracts for all candidates for federal, state or district offices. [1970, ch. 140, § 191, p. 351.]

STATUTORY NOTES

Cross References. — Abstracts of judicial election returns, § 34-1217.

Prior Laws. — Former § 34-1207 was repealed. See Prior Laws, § 34-1203.

34-1208. Certificates of nomination or election. — Immediately after the primary election canvass the county clerk shall issue certificates of nomination to the political party candidates of each party who receive the highest number of votes for their particular county office, and the candidates so certified shall have their names placed on the general election ballot. On or before the eighth day after the primary election canvass, the county clerk shall issue certificates of election to the precinct committeemen of each political party who receive the highest number of votes in their precinct. Provided that to be elected, a precinct committeeman shall receive a minimum of five (5) votes. In the event no candidate receives the minimum number of votes required to be elected, a vacancy in the office shall exist and

shall be filled as otherwise provided by law. The county clerk shall also certify by registered mail the results of both the primary and the presidential primary elections to the secretary of state. The form for such certificate shall be prescribed by the secretary of state and be uniform throughout the state. [1970, ch. 140, § 192, p. 351; am. 1975, ch. 174, § 18, p. 469; am. 1977, ch. 17, § 1, p. 35; am. 1979, ch. 309, § 11, p. 833; am. 1991, ch. 117, § 1, p. 246.]

STATUTORY NOTES

Cross References. — Canvassing returns of judicial elections and certificates of nomination or election, § 34-1217.

Prior Laws. — Former § 34-1208 was repealed. See Prior Laws, § 34-1203.

JUDICIAL DECISIONS

Cited in: Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

34-1209. Certificates of election to county candidates after general election. — Immediately after the general election canvass, the county clerk shall issue a certificate of election to the county candidates who received the highest number of votes for that particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. [1970, ch. 140, § 193, p. 351.]

STATUTORY NOTES

Cross References. — Canvassing returns of judicial elections and certificates of election, § 34-1217.

Prior Laws. — Former § 34-1209 was repealed. See Prior Laws, § 34-1203.

34-1210. Tie votes in county elections. — In the case of a tie vote between candidates at a primary election or general election, the interested candidates shall appear before the county clerk within two (2) days after the canvass and the tie shall be determined by a toss of a coin. [1970, ch. 140, § 194, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-1210 was repealed. See Prior Laws, § 34-1203.

34-1211. State board of canvassers — Meetings. — The secretary of state, state controller and state treasurer shall constitute the state board of canvassers. The functions of the board shall be election functions, and the secretary of state shall be chairman of the board. The state board of canvassers shall meet within fifteen (15) days after the primary election and within fifteen (15) days after the general election in the office of the secretary of state for the purpose of canvassing the abstracts of votes cast for all candidates for federal, state and district offices. [1970, ch. 140, § 195, p.

351; am. 1972, ch. 193, § 3, p. 480; am. 1974, ch. 5, § 1, p. 23; am. 1994, ch. 181, § 2, p. 575.]

STATUTORY NOTES

Prior Laws. — Former § 34-1211 was repealed. See Prior Laws, § 34-1203.

Effective Dates. — Section 4 of S.L. 1972, ch. 193 declared an emergency. Approved March 21, 1972.

Section 9 of S.L. 1974, ch. 5, provided the act should be in full force and effect on and after July 1, 1974.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of

canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.” Since such amendment was adopted, the amendment to this section by § 2 of S.L. 1994, ch. 181 became effective January 2, 1995.

34-1212. Examination and certification of county canvasses by state board. — The board shall examine the abstracts of votes from the county canvasses and make a statement of the total number of votes cast for all federal, state and district candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by county and legislative district, and the total number of affirmative and negative votes cast for any special question by county. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the secretary of state. [1970, ch. 140, § 196, p. 351.]

STATUTORY NOTES

Cross References. — Examination and certification of county canvass of judicial returns by state board, § 34-1217.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Duties of board.

Statements as to results.

Duties of Board.

Duties of state canvassing board are adding up the votes received by the several candidates, as returned by the several county boards, ascertaining total vote, and declaring and certifying the result. These are purely clerical, ministerial and administrative acts, and involve no judicial discretion. *Lansdon v. State Bd. of Canvassers*, 18 Idaho 596, 111 P. 133 (1910).

State canvassing board has power to send the returns from any county back for correction; but whether it does so, or declines to do so, it is not acting in excess of its jurisdiction to canvass the returns and declare the result. *Lansdon v. State Bd. of Canvassers*, 18 Idaho 596, 111 P. 133 (1910).

It is not the business of the state board to determine whether or not any illegal votes have been cast. *Lansdon v. State Bd. of Can-*

vassers, 18 Idaho 596, 111 P. 133 (1910).

Statements as to Results.

It is not necessary for the state board of canvassers to declare in terms whether, in

their opinion, any amendment to the Constitution has been adopted or not. *Hays v. Hays*, 5 Idaho 154, 47 P. 732 (1897).

34-1213. Certification of canvass of abstracts by board. — After the canvass of the abstracts, the board shall make a statement of the total number of votes cast at any such election for all the candidates for federal, state or district offices, which statement shall show the names of the persons to whom such votes shall have been cast for the particular offices and the total number cast to each, distinguishing the several districts, counties and precincts in which they were given. They shall certify such statement to be correct, and subscribe their names thereto. [1970, ch. 140, § 197, p. 351.]

34-1214. Certificates of nomination or election to federal, state, district or nonpartisan offices after primary. — (1) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the political party candidates of each party who receive the highest number of votes for their particular federal, state or district office. The candidates so certified shall have their names placed on the general election ballot.

(2) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the nonpartisan candidate or candidates who receive the highest number of votes for the number of vacancies which are to be filled for a particular office and also to the same number of candidates who receive the second highest number of votes for the particular office. The candidates so certified shall have their names placed on the general election ballot. If it appears from the canvass that a particular candidate has received a majority of the total vote cast for the particular office, he shall be issued a certificate of election instead of a certificate of nomination and no candidates shall run for the particular office in the general election. [1970, ch. 140, § 198, p. 351.]

STATUTORY NOTES

Cross References. — Certification of election or nomination to judicial offices, § 34-1217.

JUDICIAL DECISIONS

Cited in: *Robinson v. Bodily*, 97 Idaho 199, 541 P.2d 623 (1975).

34-1215. Certificates of election to federal, state and district offices after general election. — Immediately after the general election canvass, the secretary of state shall issue certificates of election to the federal, state and district candidates who received the highest number of votes for the particular office and they shall be considered duly elected to

assume the duties of the office for the next ensuing term. [1970, ch. 140, § 200, p. 351.]

STATUTORY NOTES

Cross References. — Certificates of election to judicial offices, § 34-1217.

34-1216. Tie votes — In state or district elections. — In the case of a tie vote between the candidates at a primary or general election, the interested parties or their authorized agents shall appear before the secretary of state within two (2) days after the canvass and the tie shall be determined by a toss of a coin. [1970, ch. 140, § 201, p. 351.]

STATUTORY NOTES

Effective Dates. — Section 218 of S.L. 1970, ch. 140 declared an emergency and provided that new chapter 24, and the repeal of old chapter 24, of title 34 should be effective after passage. Approved March 10, 1970.

Section 219 of S.L. 1970, ch. 140 provided that chapters 1 through 7 and chapters 9 through 12, and the repeals of old chapters 1 through 14 and chapter 16, of title 34 should be effective January 1, 1971.

34-1217. Canvassing returns of judicial elections — Certificates of nomination or election. — The board of county commissioners shall canvass the returns of the judicial nominating election at the time the returns of the primary election are canvassed, shall determine, and cause the county clerk to certify to the secretary of state, the result of said judicial nominating election. In such certificate the clerk shall set forth, following the name of each justice of the supreme court and each district judge for whom a successor is to be elected at the general election in that year, the vote received by each person who had declared himself to be, and who had been voted for as, a candidate to succeed such justice or district judge.

The returns so made to the secretary of state by the county clerk shall be canvassed by the state board of canvassers at the time the other returns of said primary election are canvassed.

If it appears to the state board of canvassers upon the official canvass that at such judicial nominating election any candidate received a majority of all the votes cast for candidates to succeed a particular justice of the supreme court or district judge, said board shall certify to the secretary of state as duly elected to such office the name of the candidate who received such majority and such candidate whose name is so certified shall receive and the secretary of state shall issue and deliver to him a certificate of election to such office and he shall not be required to stand for election at the general election following.

In the event no candidate received a majority of all votes cast for candidates to succeed a particular justice of the supreme court or a particular district judge, the two (2) candidates receiving the greater number of votes cast for all candidates to succeed such justice of the supreme court or such district judge shall be and shall be declared to be nominees to succeed such justice or such district judge and their names as such nominees shall be placed on the official judicial ballot at the general

election next following. The secretary of state shall certify the names of such nominees, including with each the name of the incumbent in office whom such candidates were nominated to succeed, to the county clerks at the time he certifies the names of candidates for other offices certified by him; provided, however, if another be appointed to succeed the incumbent person named on such judicial nominating ballot, the secretary of state shall insert in such certificate or in amendment thereto the name of the appointee in the place of the name of the incumbent person named on such judicial nominating ballot. [1970, ch. 231, § 12, p. 643; am. 1971, ch. 131, § 1, p. 513.]

STATUTORY NOTES

Cross References. — State board of canvassers, § 34-1211. Section 13 of S.L. 1970, ch. 231 provided that the act should take effect January 1, 1971.

Effective Dates. — Section 2 of S.L. 1971, ch. 131 declared an emergency. Approved March 16, 1971.

CHAPTER 13

STATE BOARD OF CANVASSERS

SECTION.
34-1301 — 34-1307. [Repealed.]

34-1301 — 34-1307. Duties and procedures of the board. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter, which comprised 1890-1891, p. 57, §§ 103-109; am. 1895, p. 90, § 1; reen. 1899, p. 33, §§ 94-100; reen. R.C., §§ 450, 452, 454, 456; am. R.C., §§ 451, 453, 455; C.L., §§ 452-456; reen. C.L., §§ 450, 451; C.S., §§ 634-640; I.C.A., §§ 33-1201 — 33-1207, was repealed by S.L. 1970, ch. 140, § 214. For present law, see §§ 34-1211 — 34-1217.

CHAPTER 14

UNIFORM DISTRICT ELECTION LAW

| | |
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| SECTION. | SECTION. |
| 34-1401. Election administration. | 34-1406. Notice of election. |
| 34-1402. Registration. | 34-1407. Write-in candidates. |
| 34-1403. Conduct of elections. | 34-1408. Absentee ballots. |
| 34-1404. Declaration of candidacy. | 34-1409. Conduct of election on election day. |
| 34-1405. Notice of election filing deadline. | 34-1410. Canvassing of election results. |

34-1401. Election administration. — Notwithstanding any provision to the contrary, the election official of each political subdivision shall administer all elections on behalf of any political subdivision, subject to the provisions of this chapter, including all special district elections and elections of special questions submitted to the electors as provided in this chapter. School districts governed by title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, irrigation districts governed by title 43, Idaho Code, ground water districts governed by chapter

52, title 42, Idaho Code, and municipal elections governed by the provisions of chapter 4, title 50, Idaho Code, are exempt from the provisions of this chapter. All municipal elections shall be conducted pursuant to the provisions of chapter 4, title 50, Idaho Code, except that they shall be governed by the elections dates authorized in section 34-106, Idaho Code, the registration procedures prescribed in section 34-1402, Idaho Code, and the time the polls are open pursuant to section 34-1409, Idaho Code. For the purposes of achieving uniformity, the secretary of state shall, from time to time, provide directives and instructions to the various county clerks and political subdivision election officials. Unless a specific exception is provided in this chapter, the provisions of this chapter shall govern in all questions regarding the conduct of elections on behalf of all political subdivisions. In all matters not specifically covered by this chapter, other provisions of title 34, Idaho Code, governing elections shall prevail over any special provision which conflicts therewith.

A political subdivision may contract with the county clerk to conduct all or part of the elections for that political subdivision. In the event of such a contract, the county clerk shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar. [I.C., § 34-1401, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 5, p. 1157; am. 1993, ch. 379, § 1, p. 1392; am. 1996, ch. 298, § 1, p. 977.]

STATUTORY NOTES

Prior Laws. — Former §§ 34-1401, 34-1402, which comprised 1890-1891, p. 57, §§ 116, 117; reen. 1899, §§ 103, 104; am. R.C., § 457; reen. R.C., § 458; C.L., §§ 457, 458; C.S., §§ 641, 642; I.C.A., §§ 33-1301, 33-1302, were repealed by S.L. 1970, ch. 140, § 215.

Amendments. — This section was amended by two 1993 acts — ch. 313, § 5 and ch. 379, § 1, both effective January 1, 1994 — which do not appear to conflict and have been compiled together.

The 1993 amendment, by ch. 313, § 5, in the first sentence of the first paragraph deleted “municipal elections,” preceding “special district elections”; deleted the comma preceding “and elections of special questions”; added the third sentence of the first paragraph; and in the first sentence of the last paragraph added “all or part of” following “county clerk to conduct”.

The 1993 amendment, by ch. 379, § 1, in the first sentence of the first paragraph deleted “municipal elections,” preceding “special district elections”; in the second sentence of the first paragraph added “and municipal elections governed by the provisions of chapter 4, title 50, Idaho Code,” preceding “are exempt from the provisions”; and in the first sentence of the last paragraph added “all or

part of” following “county clerk to conduct”.

Legislative Intent. — Section 1 of S.L. 1992, ch. 176 read: “It is the finding of the legislature that the process of exercising the elective franchise should be made as accessible as possible for as many citizens as possible. The provisions of this bill will achieve a significant consolidation of elections on four (4) election dates in each year. In addition, this election code, which applies to the various political subdivisions of the state of Idaho, will assure access to the nominating process, registration of potential electors, absentee voting opportunity and an increased visibility of the electoral process to assure public access and increase participation. At a future date, it may be warranted to further consolidate elections as events demonstrate that need. The goal of providing increased visibility for the electoral process will be well served by this consolidation of elections, by the increased public notice of filing and election deadlines, and the public education which will accompany the implementation of this act.”

Effective Dates. — Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 6 of S.L. 1993, ch. 379 provided that

the act shall be in full force and effect on January 1, 1994.

Section 10 of S.L. 1996, ch. 298 declared an emergency. Approved March 18, 1996.

34-1402. Registration. — All electors must register with the county clerk before being able to vote in any primary, general, special or any other election conducted in this state. The county clerk shall determine, for each registered elector, the elections for which he is eligible to vote by a determination of the applicable code areas. The determination of tax code area shall be made for all political subdivisions including those otherwise exempt from the provisions of this chapter.

The county clerk shall conform to the provisions of chapter 4, title 34, Idaho Code, in the administration of registration for all political subdivisions within the county. The county clerk shall appoint each city clerk for any city within the county and each election official designated by a political subdivision, as an at-large registrar as provided in section 34-406, Idaho Code, except that no compensation shall be paid by the county clerk for electors registered by these special registrars. [I.C., § 34-1402, as added by 1992, ch. 176, § 4, p. 553; am. 2003, ch. 48, § 13, p. 181.]

STATUTORY NOTES

Prior Laws. — Former § 34-1402 was repealed. See Prior Laws, § 34-1401.

2003, ch. 48 declared an emergency. Approved March 13, 2003.

Effective Dates. — Section 16 of S.L.

34-1403. Conduct of elections. — All elections conducted in this state on behalf of each political subdivision within the county shall be conducted in a uniform manner with regard to the qualifications of electors and shall be conducted on the dates as provided by law. In the event that a statute governing a political subdivision provides for qualifications more restrictive than the qualifications for an elector in section 34-402, Idaho Code, the election official of the district shall provide an elector's oath to be executed at the time of the election certifying to the elector's qualifications for the specific election. [I.C., § 34-1403, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 6, p. 1157.]

34-1404. Declaration of candidacy. — Candidates for election in any political subdivision shall be nominated by nominating petitions, each of which shall bear the name of the nominee, the office for which the nomination is made, the term for which nomination is made, bear the signature of not less than five (5) electors of the candidate's specific zone or district of the political subdivision, and be filed with the election official of the political subdivision. The form of the nominating petition shall be as provided by the county clerk and shall be uniform for all political subdivisions. For an election to be held on the fourth Tuesday in May, in even-numbered years, the nomination petition shall be filed during the period specified in section 34-704, Idaho Code. The election official shall verify the qualifications of the nominees and shall, no more than seven (7)

days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivision. For an election to be held on the first Tuesday after the first Monday of November, in even-numbered years, the nomination shall be filed on or before September 1. The election official shall verify the qualifications of the nominees, and shall not later than seven (7) days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivisions. For all other elections, the nomination shall be filed not later than 5:00 p.m. on the sixth Friday preceding the election for which the nomination is made. The election official shall verify the qualifications of the nominee, and shall not more than seven (7) days following the filing certify the nominees and any special questions, placed by action of the governing board of the political subdivisions, to be placed on the ballot of the political subdivision. [I.C., § 34-1404, as added by 1993, ch. 313, § 8, p. 1157.]

STATUTORY NOTES

Prior Laws. — Former § 34-1404 which January 1, 1994, was repealed by S.L. 1993, comprised S.L. 1992, ch. 176, § 4, effective ch. 313, § 7, effective January 1, 1994.

34-1405. Notice of election filing deadline. — [(1)] Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election, the election official of each political subdivision shall cause to be published a notice of the forthcoming candidate filing deadline. The notice shall include not less than the name of the political subdivision, the place where filing for each office takes place, and a notice of the availability of declarations of candidacy. The notice shall be published in the official newspaper of the political subdivision.

(2) The secretary of state shall compile an election calendar annually which shall include not less than a listing of the political subdivisions which will be conducting candidate elections in the forthcoming year, the place where filing for each office takes place, and the procedure for a declaration of candidacy. Annually in December, the county clerk shall cause to be published the election calendar for the county for the following calendar year. It shall be the duty of the election official of each political subdivision to notify the county clerk, not later than the last day of November, of any election for that political subdivision to occur during the next calendar year. In the event of failure to so notify the county clerk, the election official of the political subdivision shall cause to be published notice of the omitted election as soon as he is aware of the omission. This publication shall be in addition to the publication required by paragraph (1) of this section. The election calendar for the county shall be published in at least two (2) newspapers published within the county, but if this is not possible, the calendar shall be published in one (1) newspaper which has general circulation within the county. Copies of the election calendar shall be available, without charge, from the office of the secretary of state or the county clerk. [I.C., § 34-1405, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 9, p. 1157.]

STATUTORY NOTES

Compiler's Notes. — The bracketed subsection designation "(1)" was inserted by the compiler as it was inadvertently deleted by the 1993 amendment of this section.

34-1406. Notice of election. — The election official of each political subdivision shall give notice for any election by publishing such notice in the official newspaper of the political subdivision. The notice shall state the date of the election, the polling places, and the hours during which the polls shall be open for the purpose of voting. The first publication shall be made not less than twelve (12) days prior to the election, and the last publication of notice shall be made not less than five (5) days prior to the election. [I.C., § 34-1406, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 10, p. 1157.]

34-1407. Write-in candidates. — No write-in candidate for any non-partisan elective office shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office. The declaration of intent shall be filed with the election official not less than twenty-five (25) days before the date of the election.

If the statutes governing elections within a specific political subdivision provide that no election shall be held in the event that no more than one (1) candidate has filed for an office, that statute shall be interpreted in such a manner as to allow for filing a declaration of intent for a write-in candidate until twenty-five (25) days preceding the election. However, if no candidate has filed within that time, no election shall be held for that political subdivision. The provisions of this section shall not apply to candidates in the primary or general election covered by the provisions of section 34-702A, Idaho Code. [I.C., § 34-1407, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 11, p. 1157; am. 1997, ch. 362, § 1, p. 1069.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

34-1408. Absentee ballots. — Any registered elector may vote at any election by absentee ballot as provided in chapter 10, title 34, Idaho Code. In the event of a written application to the county clerk for an absentee ballot, the application shall be deemed to be an application for all ballots to be voted in the election, and the county clerk shall notify the election official of each political subdivision conducting an election at that date, and the election official shall provide the ballot of the political subdivision to the elector. [I.C., § 34-1408, as added by 1992, ch. 176, § 4, p. 553.]

34-1409. Conduct of election on election day. — At all elections conducted by any political subdivision, the polls shall be opened at 8:00 a.m. and remain open until all registered electors of that precinct have appeared

and voted or until 8:00 p.m. of the same day, whichever comes first. However, the election official may, at his option, open the polls in his jurisdiction at 7:00 a.m.

All political subdivisions conducting elections on the same date shall, whenever practicable, use the same polling places. [I.C., § 34-1409, as added by 1992, ch. 176, § 4, p. 553.]

34-1410. Canvassing of election results. — Each political subdivision shall conduct the canvass of the election results, in the manner provided in chapter 12, title 34, Idaho Code. Each political subdivision shall issue the appropriate certificates of election. [I.C., § 34-1410, as added by 1992, ch. 176, § 4, p. 553.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

CHAPTER 15

PRESIDENTIAL ELECTORS

| | |
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| SECTION. | SECTION. |
| 34-1501. Certificates of election. | 34-1505. Filling vacancies — Tie vote. |
| 34-1502. Election for presidential electors. | 34-1506. Notification of election to fill vacancy. |
| 34-1503. Meeting of electors. | 34-1507. Compensation and mileage of electors. |
| 34-1504. Notice to governor — Vacancies, how filled. | |

34-1501. Certificates of election. — The secretary of state shall prepare lists of the names of the electors of president and vice-president of the United States, elected at any election, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver one (1) of such certificates thus signed to each of said electors on or before the second Wednesday in December next after such election. [1890-1891, p. 57, § 110; reen. 1899, p. 33, § 101; reen. R.C. & C.L., § 459; C.S., § 643; I.C.A., § 33-1401.]

JUDICIAL DECISIONS

Status of Electors.
Presidential electors are not state officers.
State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 P. 1060 (1912).

34-1502. Election for presidential electors. — There shall be an election held in this state for the election of such electors, at the times appointed by any law of the Congress or the Constitution of the United States for such election, and when such election shall be special, the same shall be called and held, and the votes polled and canvassed, in all respects as at a general election, and the duties of the electors so elected shall be the

same as prescribed by law for electors elected at a general election. [1890-1891, p. 57, latter part of § 115; reen. 1899, p. 33, § 102; am. R.C. & C.L., § 460; C.S., § 644; I.C.A., § 33-1402.]

JUDICIAL DECISIONS

Method of Nominating.

Methods of nominating candidates for pres-

idential electors. See State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 P. 1060 (1912).

34-1503. Meeting of electors. — The electors chosen to elect a president and vice-president of the United States shall, at twelve (12) o'clock noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this state, and then and there perform the duties enjoined upon them by the Constitution and laws of the United States. [1890-1891, p. 57, § 111; reen. 1899, p. 66, § 1; am. R.C. & C.L., § 461; C.S., § 645; I.C.A., § 33-1403.]

STATUTORY NOTES

Cross References. — Constitutional provisions, U. S. Const., Amend. 12 and Amend. 20.

JUDICIAL DECISIONS

One Meeting Only.

Presidential electors have no regular terms of office, but discharge their duties at one

meeting. State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 P. 1060 (1912).

34-1504. Notice to governor — Vacancies, how filled. — Each elector of president and vice-president of the United States shall, before the hour of twelve (12) o'clock on the day next preceding the day fixed by the law of Congress to elect a president and vice-president, give notice to the governor that he is at the seat of government and ready at the proper time to perform the duties of an elector; and the governor shall forthwith deliver to the electors present a certificate of all the names of the electors; and if any elector named therein fails to appear before nine (9) o'clock on the morning of the day of election of president and vice-president as aforesaid, the electors then present shall immediately proceed to elect, by ballot, in the presence of the governor, persons to fill such vacancies. [1890-1891, p. 57, § 112; reen. 1899, p. 66, § 2; am. R.C. & C.L., § 462; C.S., § 646; I.C.A., § 33-1404.]

34-1505. Filling vacancies — Tie vote. — If more than the number of persons required to fill the vacancies, as aforesaid, have the highest and an equal number of votes, then the governor, in the presence of the electors attending, shall decide by lot which of said persons shall be elected; otherwise they, to the number required, having the greatest number of votes, shall be considered elected to fill such vacancies. [1890-1891, p. 57,

§ 113; reen. 1899, p. 66, § 3; reen. R.C. & C.L., § 463; C.S., § 647; I.C.A., § 33-1405.]

34-1506. Notification of election to fill vacancy. — Immediately after such choice is made the names of the persons so chosen shall forthwith be certified to the governor by the electors making such choice; and the governor shall cause immediate notice to be given in writing to the electors chosen to fill such vacancies; and the said persons so chosen shall be electors, and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as electors aforesaid by the Constitution and laws of the United States and of this state. [1890-1891, p. 57, § 114; reen. 1899, p. 66, § 4; reen. R.C. & C.L., § 464; C.S., § 648; I.C.A., § 33-1406.]

34-1507. Compensation and mileage of electors. — Every elector of this state for the election of president and vice president of the United States, hereafter elected, who shall attend and give his vote for those offices at the time and place appointed by law, shall be compensated as provided by section 59-509(d), Idaho Code. [1890-1891, p. 57, § 115; reen. 1899, p. 66, § 5; am. R.C. & C.L., § 465; C.S., § 649; I.C.A., § 33-1407; am. 1980, ch. 247, § 28, p. 582.]

CHAPTER 16
SPECIAL ELECTIONS

SECTION.
34-1601 — 34-1605. [Repealed.]

34-1601 — 34-1605. Conduct of special elections — Meetings of canvassing boards. [Repealed.]

STATUTORY NOTES

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| Compiler's Notes. — This chapter, which comprised 1890-1891, p. 57, §§ 16, 24, 177-179; reen. 1899, p. 33, §§ 157-161; reen. R.C., §§ 480, 481, 483, 484; am. R.C., § 482; C.L., | §§ 480-484; C.S., §§ 664-668; I.C.A., §§ 33-1501 — 33-1505; am. 1965, ch. 111, § 1, p. 217, was repealed by S.L. 1970, ch. 140, § 216. |
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CHAPTER 17
RECALL ELECTIONS

SECTION.
34-1701. Officers subject to recall.
34-1702. Required signatures on petition.
34-1703. Form of petition.
34-1704. Printing of petition and sheets for signatures — Time limits for perfecting petition.
34-1705. Verification on sheets for signatures.
34-1706. Examination and certification of signatures.

SECTION.
34-1707. Sufficiency of petition — Notification — Effect of resignation — Special election.
34-1708. Form of recall ballot.
34-1709. Officer to continue in office.
34-1710. Conduct of special recall election.
34-1711. Canvass of returns.
34-1712. General election laws control.
34-1713. Time within which recall may be filed — Removal of signatures.

SECTION.

34-1714. Prohibited acts — Penalties.
 34-1715. Refusal to accept petition — Man-
 date — Injunction.

SECTION.

34-1716 — 34-1727. [Repealed.]

34-1701. Officers subject to recall. — The following public officers, whether holding their elective office by election or appointment, and none other, are subject to recall:

(1) State officers:

(a) The governor, lieutenant-governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction;

(b) Members of the state senate, and members of the state house of representatives.

(2) County officers:

(a) The members of the board of county commissioners, sheriff, treasurer, assessor, prosecuting attorney, clerk of the district court, and coroner.

(3) City officers:

(a) The mayor;

(b) Members of the city council.

(4) Special district elected officers for whom recall procedure is not otherwise provided by law. [I.C., § 34-1701, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 1, p. 302; am. 1994, ch. 181, § 3, p. 575; am. 1995, ch. 266, § 1, p. 848.]

STATUTORY NOTES

Prior Laws. — Former §§ 34-1701 — 34-1715, which comprised S.L. 1933, ch. 209, §§ 1-15, were repealed by S.L. 1972, ch. 283, § 1.

Effective Dates. — Section 44 of S.L. 1994, ch. 181 provided: "(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

"(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has

been adopted at the general election of 1994 to change the name of the state auditor to state controller.

"If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act." Since such amendment was adopted, the amendment to this section by § 3 of S.L. 1994, ch. 181 became effective January 2, 1995.

34-1702. Required signatures on petition. — A petition for recall of an officer shall be instituted by filing with the appropriate official a verified written petition requesting such recall.

(1) If the petition seeks recall of any of the officers named in subsection (1)(a) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held to elect a governor.

(2) If the petition seeks recall of any of the officers named in subsection (1)(b) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors of the legislative district equal in number to twenty percent (20%) of the number of

electors registered to vote at the last general election held in the legislative district at which the member was elected.

(3) If the petition seeks recall of any of the officers named in subsection (2)(a) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk, and must be signed by registered electors of the county equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the county for the election of county officers at which the officer was elected.

(4) If the petition seeks recall of any of the officers named in subsection (3) of section 34-1701, Idaho Code, the petition shall be filed with the city clerk, and must be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers.

(5) If the petition seeks recall of any of the officers named in subsection (4) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk of the county wherein the district is located. If the district is located in two (2) or more counties, the clerk in each county shall perform the functions within that county. The petition must be signed by registered electors of the district equal in number to fifty percent (50%) of the number of electors who cast votes in the last election of the district. If no district election has been held in the last six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district at the time the petition is filed. [I.C., § 34-1702, as added by 1972, ch. 283, § 3, p. 703; am. 1995, ch. 266, § 2, p. 848; am. 2003, ch. 57, § 1, p. 200.]

STATUTORY NOTES

Prior Laws. — Former § 34-1702 was repealed. See Prior Laws, § 34-1701.

JUDICIAL DECISIONS

Cited in: *West v. Cenarrusa*, 95 Idaho 822, 520 P.2d 1088 (1974).

34-1703. Form of petition. — (1) The recall petition for state officers other than members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable..., Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of the State of Idaho respectfully demand that ..., holding the office of ..., be recalled by the registered electors of this state for the following reasons, to-wit: (setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the State of Idaho; my residence, post office address, and the date I signed this petition are correctly written after my name.

| | | | | |
|-----------|--------------|-----------------------------------|------------------------|------|
| Signature | Printed Name | Residence Street and Number | City or Post Office | Date |
|-----------|--------------|-----------------------------------|------------------------|------|

(Here follow twenty numbered lines for signatures.)

(2) The recall petition for members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable...., Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of Legislative District No., respectfully demand that, holding the office of, be recalled by the registered electors of Legislative District No. for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of Legislative District No., my residence, post office address, and the date I signed this petition are correctly written after my name.

| | | | | |
|-----------|--------------|-----------------------------------|------------------------|------|
| Signature | Printed Name | Residence Street and Number | City or Post Office | Date |
|-----------|--------------|-----------------------------------|------------------------|------|

(Here follow twenty numbered lines for signatures.)

(3) The recall petition for county officers shall be in substantially the following form:

RECALL PETITION

To the honorable...., County Clerk for the County of:

We, the undersigned citizens and registered electors of the County of, respectfully demand that, holding the office of, of the County of, be recalled by the registered electors of the County of for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the County of, my residence, post office address, and the date I signed this petition are correctly written after my name.

| | | | | |
|-----------|--------------|-----------------------------------|------------------------|------|
| Signature | Printed Name | Residence Street and Number | City or Post Office | Date |
|-----------|--------------|-----------------------------------|------------------------|------|

(Here follow twenty numbered lines for signatures.)

(4) The recall petition for city officers shall be in substantially the following form:

RECALL PETITION

To the honorable... , City Clerk for the City of :

We, the undersigned citizens and registered electors of the City of, respectfully demand that, holding the office of, of the City of, be recalled by the registered electors of the City of for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the City of, my residence, post office address, and the date I signed this petition are correctly written after my name.

| | | | | |
|-----------|--------------|------------|-------------|------|
| Signature | Printed Name | Residence | City or | Date |
| | | Street and | Post Office | |
| | | Number | | |

(Here follow twenty numbered lines for signatures.)

(5) The recall petition for special district officers shall be in substantially the following form:

RECALL PETITION

To the honorable , County Clerk of the County of:

We, the undersigned citizens and registered electors of (here insert the official name of the district), respectfully demand that , holding the office of , of the (district), be recalled by the registered electors of the (district) for the following reasons, to-wit: (insert the reasons for the recall in two hundred (200) words or less); that a special election therefor be called, that we, each for himself say: I am a registered elector of the (district), my residence, post office address, and the date I signed this petition are correctly written after my name.

| | | | | |
|-----------|--------------|------------|-------------|------|
| Signature | Printed Name | Residence | City or | Date |
| | | Street and | Post Office | |
| | | Number | | |

(Here follow twenty numbered lines for signatures.)

[I.C., § 34-1703, as added by 1972, ch. 283, § 3, p. 703; am. 1989, ch. 344, § 1, p. 867; am. 1995, ch. 266, § 3, p. 848.]

STATUTORY NOTES

Prior Laws. — Former § 34-1703 was in parentheses so appeared in the law as repealed. See Prior Laws, § 34-1701. enacted.

Compiler's Notes. — The words enclosed

JUDICIAL DECISIONS

Cited in: West v. Cenarrusa, 95 Idaho 822, 520 P.2d 1088 (1974).

34-1704. Printing of petition and sheets for signatures — Time limits for perfecting petition. — (1) Before or at the time of beginning to circulate any petition for the recall of any officer subject to recall, the person or persons, organization or organizations under whose authority the recall petition is to be circulated, shall send or deliver to the secretary of state, county clerk, or city clerk, as the case may be, a copy of a prospective petition duly signed by at least twenty (20) electors eligible to sign such petition. The receiving officer shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions and signature sheets for recall shall be printed on a good quality bond or ledger paper of standardized size in substantial conformance within the provisions of section 34-1703, Idaho Code. To every sheet of petitioners' signatures shall be attached a full and correct copy of the recall petition.

(2) The secretary of state, county clerk, or city clerk, as the case may be, shall indicate in writing on the prospective recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, the secretary of state, county clerk, or city clerk, shall inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of certified signatures within seventy-five (75) days following the date of approval as to form. Signatures on the prospective petition shall not be counted toward the required number of certified signatures. Any petition that has not been perfected with the required number of certified signatures within the seventy-five (75) days allowed shall be declared null and void ab initio in its entirety. [I.C. § 34-1704, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 2, p. 302; am. 2004, ch. 164, § 1, p. 533.]

STATUTORY NOTES

Prior Laws. — Former § 34-1704 was repealed. See Prior Laws, § 34-1701.

JUDICIAL DECISIONS

Cited in: *West v. Cenarrusa*, 95 Idaho 822, 520 P.2d 1088 (1974).

34-1705. Verification on sheets for signatures. — Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho

ss.

County of

I, . . . , swear, under penalty of perjury, that I am a resident of the State of Idaho and at least eighteen (18) years of age; and that every person who signed this sheet of the foregoing petition signed his or her name thereto in

my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

(Signature)

Post office address

.....

Subscribed and sworn to before me this day of,

(Notary Seal)

.....

Notary Public

Residing at

[I.C., § 34-1705, as added by 1972, ch. 283, § 3, p. 703; am. 2004, ch. 164, § 2, p. 533.]

STATUTORY NOTES

Prior Laws. — Former § 34-1705 was repealed. See Prior Laws, § 34-1701.

34-1706. Examination and certification of signatures. — All petitions with attached signature sheets shall be filed on the same day with the secretary of state, county clerk, or city clerk, as the case may be. The secretary of state or the city clerk shall promptly transmit the petitions and attached signature sheets to the county clerk. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk as provided in section 34-1807, Idaho Code. This examination shall not exceed fifteen (15) business days from the date of receipt of the petitions. [I.C., § 34-1706, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 3, p. 302; am. 1995, ch. 266, § 4, p. 848; am. 2004, ch. 164, § 3, p. 533.]

STATUTORY NOTES

Prior Laws. — Former § 34-1706 was repealed. See Prior Laws, § 34-1701.

JUDICIAL DECISIONS

Sufficiency of Petition.

In action to require secretary of state to accept and file recall petition, the omission of the word "Pocatello" from the petition did not render it insufficient where each of the signers supplied his name, residence, county, leg-

islative district, election precinct, and was a resident of the 34th legislative district when that district was composed entirely of precincts of the city of Pocatello. *West v. Cenarrusa*, 95 Idaho 822, 520 P.2d 1088 (1974).

34-1707. Sufficiency of petition — Notification — Effect of resignation — Special election. — (1) In the event that a petition filed with the secretary of state is found by the secretary of state to contain the required number of certified signatures, the secretary of state shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the secretary of state, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the secretary of state, a special election shall be ordered by the secretary of state, unless he is the officer being recalled, in which event the governor shall order such special election. The special election must be held on the date prescribed in section 34-106, Idaho Code. If the officer being recalled is one (1) specified in section 34-1701(1)(a), Idaho Code, the special election shall be conducted state-wide. If the officer being recalled is one (1) specified in section 34-1701(1)(b), Idaho Code, the special election shall be conducted only in the legislative district.

(2) In the event that a petition filed with the county clerk is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the county clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted countywide.

(3) In the event that a petition filed with the county clerk concerning the recall of an official of a special district is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, and the governing board and election officials of the special district that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the governing board of the special district. The special election must be held on the date prescribed in section 34-106, Idaho Code. The election shall be conducted by the special district in the manner provided in section 34-1401, Idaho Code, and the special district may contract with the county clerk as provided in section 34-1401, Idaho Code.

(4) In the event that a petition filed with a city clerk is found by the city clerk to contain the required number of certified signatures, the city clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the city clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the city clerk, a special election shall be ordered by the city clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted citywide.

(5) In the event that a petition is found not to have the required number of signatures, the officer shall continue in office and no new recall petition may be circulated for a period of ninety (90) days against the same officer. [I.C., § 34-1707, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 4, p. 302; am. 1989, ch. 344, § 2, p. 867; am. 1993, ch. 313, § 13, p. 1157; am. 1994, ch. 54, § 6, p. 93; am. 1995, ch. 266, § 5, p. 848; am. 2004, ch. 164, § 4, p. 533.]

STATUTORY NOTES

Prior Laws. — Former § 34-1707 was repealed. See Prior Laws, § 34-1701.

Effective Dates. — Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 7 of S.L. 1994, ch. 54, provided that

“an emergency existing therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

34-1708. Form of recall ballot. — The ballot at any recall election shall be headed “RECALL BALLOT” and on the ballot shall be printed in not more than two hundred (200) words the reason for demanding the recall of the officer named in the recall petition, and in not more than two hundred (200) words the officer’s justification of his course in office. Then the question of whether the officer should be recalled shall be placed on the ballot in a form substantially similar to the following:

☐ FOR recalling..... who holds office of

☐ AGAINST recalling..... who holds office of

[I.C., § 34-1708, as added by 1972, ch. 283, § 3, p. 703; am. 1989, ch. 344, § 3, p. 867.]

STATUTORY NOTES

Prior Laws. — Former § 34-1708 was repealed. See Prior Laws, § 34-1701.

34-1709. Officer to continue in office. —

The officer named in the recall petition shall continue to perform the duties of his office until the results of the special recall election are officially declared. [I.C., 34-1709, as added by 1972, ch. 283, § 3, p. 703.]

STATUTORY NOTES

Prior Laws. — Former § 34-1709 was repealed. See Prior Laws, § 34-1701.

34-1710. Conduct of special recall election. — Special elections for the recall of an officer shall be conducted and the results thereof canvassed and certified in all respects as general elections, except as otherwise provided. Nothing in this chapter shall preclude the holding of a recall election with another election. [I.C., § 34-1710, as added by 1972, ch. 283, § 3, p. 703; am. 1989, ch. 344, § 4, p. 867; am. 1995, ch. 118, § 46, p. 848.]

STATUTORY NOTES

Prior Laws. — Former § 34-1710 was repealed. See Prior Laws, § 34-1701.

34-1711. Canvass of returns. — (1) The board of county commissioners shall act as the board of canvassers for all special recall elections involving state and county officers that involve elections held wholly or partly within their county.

(a) For all special recall elections involving state officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and shall immediately transmit to the secretary of state an abstract of the votes cast.

(b) Within fifteen (15) days following the special recall election held to recall a state officer, the state board of canvassers shall meet and canvass the votes cast at such election, and the secretary of state shall immediately after the completion thereof, proclaim the results.

(c) For all special recall elections involving county officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results.

(d) For all special recall elections involving city officers, the mayor and council shall meet within six (6) days after said election to canvass the votes cast at such election, and the city clerk shall immediately after the completion thereof, proclaim the results. [I.C., § 34-1711, as added by 1972, ch. 283, § 3, p. 703; am. 2004, ch. 164, § 5, p. 533.]

STATUTORY NOTES

Cross References. — State board of canvassers, § 34-1211.

Prior Laws. — Former § 34-1711 was repealed. See Prior Laws, § 34-1701.

Compiler's Notes. — As enacted in 1972, this section contains a subsection (1), but no subsection (2).

34-1712. General election laws control. — (1) The provisions relating to general elections, including the payment of expenses of conducting the recall election, shall govern special recall elections except where otherwise provided for.

(2) Whenever a special recall election is ordered, notice must be issued and posted in the same manner as for a general election.

(3) To recall any officer, a majority of the votes cast at the special recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall must equal or exceed the votes cast at the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall.

(4) If recalled, an officer shall be recalled as of the time when the results of the special recall election are proclaimed, and a vacancy in the office shall exist.

(5) If an officer is recalled from his office the vacancy shall be filled in the manner provided by law for filling a vacancy in that office arising from any other cause. [I.C., § 34-1712, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 5, p. 302; am. 2003, ch. 57, § 2, p. 200.]

STATUTORY NOTES

Prior Laws. — Former § 34-1712 was repealed. See Prior Laws, § 34-1701.

34-1713. Time within which recall may be filed — Removal of signatures. — (1) No petition for a recall shall be circulated against any officer until he has actually held his office ninety (90) days.

(2) After one (1) special recall election, no further recall petition shall be filed against the same officer during his current term of office, unless the petitioners first pay into the public treasury which has paid such special recall election expenses the whole amount of the expenses for the preceding recall election. The specific reason for recall in one (1) recall petition cannot be the basis for a second recall petition during that current term of office.

(3) The signer of any recall petition may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed. [I.C., § 34-1713, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 6, p. 302; am. 2004, ch. 164, § 6, p. 533.]

STATUTORY NOTES

Prior Laws. — Former § 34-1713 was repealed. See Prior Laws, § 34-1701.

34-1714. Prohibited acts — Penalties. — (1) A person is guilty of a felony, who:

- (a) Signs any name other than his own to any recall petition;
- (b) Knowingly signs his name more than once on the same recall petition;
- (c) Knowingly signs his name to any recall petition for the recall of any state, county or city officer if he is not a registered elector;
- (d) Wilfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purport or effect of any recall petition for the purpose of obtaining any signature to any such

petition, or for the purpose of persuading any person to sign any such recall petition;

(e) Presents to any officer for filing any recall petition to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent, or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto;

(f) Circulates or causes to circulate any recall petition, knowing the same to contain false, forged or fictitious names;

(g) Makes any false affidavit concerning any recall petition or the signatures appended thereto;

(h) Offers, proposes or threatens for any pecuniary reward or consideration:

(i) To offer, propose, threaten or attempt to sell, hinder or delay any recall petition or any part thereof or any signatures thereon;

(ii) To offer, propose or threaten to desist from beginning, promoting or circulating any recall petition;

(iii) To offer, propose, attempt or threaten in any manner or form to use any recall petition or any power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest.

(2) A public officer is guilty of a felony, who:

(a) Knowingly makes any false return, certification or affidavit concerning any recall petition, or the signatures appended thereto. [I.C., § 34-1714, as added by 1972, ch. 283, § 3, p. 703; am. 1972, ch. 382, § 1, p. 1114.]

STATUTORY NOTES

Cross References. — Penalty for felony when not otherwise provided, § 18-112.

Prior Laws. — Former § 34-1714 was repealed. See Prior Laws, § 34-1701.

Compiler's Notes. — As enacted in 1972, subsection (2) of this section contains a paragraph (a), but not paragraph (b).

34-1715. Refusal to accept petition — Mandate — Injunction. — If the secretary of state, county clerk, or city clerk, refuses to accept and file any petition for the recall of a public officer with the requisite number of eligible signatures, any citizen may apply within ten (10) business days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state, county clerk, or city clerk shall then accept and file the recall petition, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office, except that the time limitations required by section 34-1704(2), Idaho Code, shall begin to run only as of the date of the court judgment, which shall be so stated in the judgment. On a showing that the petition is not legally sufficient, the court may enjoin the secretary of state, county clerk, or city clerk, and all other officers from certifying or printing any official ballot for a recall election. All such suits shall be advanced on the court

docket and heard and decided by the court as quickly as possible. Either party may appeal to the court of appeals within ten (10) business days after a decision is rendered. The district court of the state of Idaho in and for Ada County shall have jurisdiction in all cases involving the recall of state officers. [I.C., § 34-1715, as added by 1972, ch. 283, § 3, p. 703; am. 2004, ch. 164, § 7, p. 533.]

STATUTORY NOTES

Prior Laws. — Former § 34-1715 was repealed. See Prior Laws, § 34-1701.

34-1716 — 34-1727. Filling of vacancies — Petitions — Unlawful practices — Penalty. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1933, ch. 209, §§ 16-27, were repealed by S.L. 1972, ch. 283, § 1.

CHAPTER 18

INITIATIVE AND REFERENDUM ELECTIONS

SECTION.

- 34-1801. Statement of legislative intent and legislative purpose.
- 34-1801A. Petition.
- 34-1802. Initiative petitions — Time for gathering signatures — Time for submission of signatures to the county clerk — Time for filing.
- 34-1803. Referendum petitions — Time for filing — When election held — Effective date of law.
- 34-1803B. Initiative and referendum petitions — Removal of signatures.
- 34-1804. Printing of petition and signature sheets.
- 34-1805. Sponsors to print petition — Number of signers required.
- 34-1806. Binding of petition and signature sheets — Approved measures to be printed with session laws.
- 34-1807. Circulation of petitions — Verification of petition and signature sheets — Comparison of signatures with registration oaths and records — Certain petitions and signatures void.
- 34-1808. Filing of petition — Mandate — Injunction.
- 34-1809. Review of initiative and referendum measures by attorney general — Certificate of review pre-

SECTION.

- requisite to assignment of ballot title — Ballot title — Judicial review.
- 34-1810. Printing and designation of ballot titles on official ballots.
- 34-1811. Manner of voting — Procedure when conflicting measures approved.
- 34-1812. [Repealed.]
- 34-1812A. Arguments concerning initiative and referendum measures.
- 34-1812B. Submission of rebuttal arguments.
- 34-1812C. Voters' pamphlet.
- 34-1813. Counting, canvassing and return of votes.
- 34-1814. Who may sign petition — Effect of wrongful signing — Penalty for wrongful signing.
- 34-1814A. [Repealed.]
- 34-1815. False statements spoken or written concerning petition unlawful — Failure to disclose material provisions.
- 34-1816. Filing petition with false signatures unlawful.
- 34-1817. Circulating petition with false, forged or fictitious names unlawful.
- 34-1818. False affidavit by any person unlawful.
- 34-1819. False return, certification or affidavit by public official unlawful.

SECTION.

34-1820. Signing more than once or when not qualified unlawful.

34-1821. Felonious acts enumerated.

SECTION.

34-1822. Penalty for violations.

34-1823. Severability.

34-1801. Statement of legislative intent and legislative purpose.

— The legislature of the state of Idaho finds that there have been incidents of fraudulent and misleading practices in soliciting and obtaining signatures on initiative or referendum petitions, or both, that false signatures have been placed upon initiative or referendum petitions, or both, that difficulties have arisen in determining the identity of petition circulators and that substantial danger exists that such unlawful practices will or may continue in the future. In order to prevent and deter such behavior, the legislature determines that it is necessary to provide easy identity to the public of those persons who solicit or obtain signatures on initiative or referendum petitions, or both, and of those persons for whom they are soliciting and obtaining signatures and to inform the public concerning the solicitation and obtaining of such signatures. It is the purpose of the legislature in enacting this act to fulfill the foregoing statement of intent and remedy the foregoing practices. [I.C., § 34-1801, as added by 1997, ch. 266, § 2, p. 756.]

STATUTORY NOTES

Compiler's Notes. — Former § 34-1801 was amended and redesignated as § 34-1801A by § 1 of S.L. 1997, ch. 266, effective July 1, 1997.

The words "this act", used in the last sentence, refer to S.L. 1997, Chapter 266, which is codified as §§ 34-1801 to 34-1802, 34-1803B, 34-1805, 34-1807, 34-1809, 34-1814, 34-1815, and 34-1823.

Effective Dates. — Section 12 of S.L. 1997, ch. 266 read: "This act shall be in full force and effect on and after July 1, 1997, and this act shall apply to all initiative petitions that have been submitted with qualifying signatures pursuant to section 34-1804, Idaho Code, on and after July 1, 1997."

34-1801A. Petition. — The following shall be substantially the form of petition for any law proposed by the initiative:

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable . . . , Secretary of State of the State of Idaho:

"We, the undersigned citizens and qualified electors of the State of Idaho, respectfully demand that the following proposed law, to-wit: (setting out full text of measure proposed) shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular general election, to be held on the . . . day of . . . , A.D., . . . , and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and post office are correctly written after my name.

| | | | |
|-----------|--------------|--------------------------------|------------------------|
| Signature | Printed Name | Residence Street and Number | City or Post Office |
|-----------|--------------|--------------------------------|------------------------|

(Here follow twenty numbered lines for signatures.)

The petition for referendum on any act passed by the state legislature of the state of Idaho shall be in substantially the same form with appropriate title and changes, setting out in full the text of the act of the legislature to be referred to the people for their approval or rejection. [1933, ch. 210, § 1, p. 431; am. 1988, ch. 48, § 1, p. 66; am. and redesisg. 1997, ch. 266, § 1, p. 756.]

STATUTORY NOTES

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| Cross References. — Constitutional au- thorization, Const., Art. III, § 1. | Compiler’s Notes. — This section was formerly compiled as § 34-1801. |
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JUDICIAL DECISIONS

ANALYSIS

“Legal voter” construed.
Repeal by legislature.

“Legal Voter” Construed.
One who is not registered to vote is not a “legal voter” (now “qualified elector”) within the meaning of this section. Dredge Mining Control — Yes!, Inc. v. Cenarrusa, 92 Idaho 480, 445 P.2d 655 (1968).
Repeal by Legislature.
The legislature had the constitutional power to repeal the Senior Citizens’ Grants

Act initiated by the people and approved and passed by a vote of the people at a general election. Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943).
Cited in: In re Idaho State Fed’n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

34-1802. Initiative petitions — Time for gathering signatures — Time for submission of signatures to the county clerk — Time for filing. — (1) Except as provided in section 34-1804, Idaho Code, petitions for an initiative shall be circulated and signatures obtained beginning upon the date that the petitioners receive the official ballot title from the secretary of state and extending eighteen (18) months from that date or April 30 of the year that an election on the initiative will be held, whichever occurs earlier. The last day for circulating petitions and obtaining signatures shall be the last day of April in the year an election on the initiative will be held.
(2) The person or persons or organization or organizations under whose authority the measure is to be initiated shall submit the petitions containing signatures to the county clerk for verification pursuant to the provisions of section 34-1807, Idaho Code. The signatures required shall be submitted to the county clerk not later than the close of business on the first day of May in the year an election on the initiative will be held, or eighteen (18) months from the date the petitioner receives the official ballot title from the secretary of state, whichever is earlier.
(3) The county clerk shall, within sixty (60) calendar days of the deadline for the submission of the signatures, verify the signatures contained in the

petitions, but in no event shall the time extend beyond the last day of June in the year an election on the initiative will be held.

(4) Initiative petitions with the requisite number of signatures attached shall be filed with the secretary of state not less than four (4) months before the election at which they are to be voted upon. [1933, ch. 210, § 2, p. 431; am. 1997, ch. 266, § 3, p. 756.]

34-1803. Referendum petitions — Time for filing — When election held — Effective date of law. — Referendum petitions with the requisite number of signatures attached shall be filed with the secretary of state not more than sixty (60) days after the final adjournment of the session of the state legislature which passed on the bill on which the referendum is demanded. All elections on measures referred to the people of the state shall be had at the biennial regular election. Any measure so referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon, and not otherwise. [1933, ch. 210, § 3, p. 431.]

JUDICIAL DECISIONS

ANALYSIS

Bill containing emergency clause.
Constitutional authority.

Bill Containing Emergency Clause.

The legislature of this state is authorized by Const., art. III, § 22, to declare an emergency and thereby render an act effective immediately upon its passage; the people of this state are statutorily authorized by this section to approve or reject that legislation at the next biennial election. Hence, H.B. 2 (S.L. 1985, ch. 2; §§ 44-2001 — 44-2011), designated as an emergency bill by the legislature, was effective immediately and would con-

tinue to be effective until the next biennial election, and, thereafter, only if approved by the voters. *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

Constitutional Authority.

The right to veto by referendum any act of the legislature under the provisions of art. III, § 1 is limited by the filing requirements of this section. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

34-1803B. Initiative and referendum petitions — Removal of signatures. — (1) The signer of any initiative or referendum petition may remove his or her own name from the petition by crossing out, obliterating or otherwise defacing his or her own signature at any time prior to the time when the petition is presented to the county clerk for signature verification.

(2) The signer of any initiative or referendum petition may have his or her name removed from the petition at any time after presentation of the petition to the county clerk but prior to verification of the signature, by presenting or submitting to the county clerk a signed statement that the signer desires to have his name removed from the petition. The statement shall contain sufficient information to clearly identify the signer. The county clerk shall immediately strike the signer's name from the petition, and adjust the total of certified signatures on the petition accordingly. The statement shall be attached to, and become a part of the initiative or referendum petition. [I.C., § 34-1803B, as added by 1997, ch. 266, § 4, p. 756.]

34-1804. Printing of petition and signature sheets. — Before or at the time of beginning to circulate any petition for the referendum to the people on any act passed by the state legislature of the state of Idaho, or for any law proposed by the initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated shall send or deliver to the secretary of state a copy of such petition duly signed by at least twenty (20) qualified electors of the state which shall be filed by said officer in his office, and who shall immediately transmit a copy of the petition to the attorney general for the issuance of the certificate of review as provided in section 34-1809, Idaho Code. All petitions for the initiative and for the referendum and sheets for signatures shall be printed on a good quality of bond or ledger paper in the form and manner as approved by the secretary of state. To every sheet of petitioners' signatures shall be attached a full and correct copy of the measure so proposed by initiative petition; but such petition may be filed by the secretary of state in numbered sections for convenience in handling. Every sheet of petitioners' signatures upon referendum petitions shall be attached to a full and correct copy of the measure on which the referendum is demanded, and may be filed in numbered sections in like manner as initiative petitions. Not more than twenty (20) signatures on one (1) sheet shall be counted. Each signature sheet shall contain signatures of qualified electors from only one (1) county. [1933, ch. 210, § 4, p. 431; am. 1988, ch. 48, § 2, p. 66.]

34-1805. Sponsors to print petition — Number of signers required. — After the form of the initiative or referendum petition has been approved by the secretary of state as in sections 34-1801A through 34-1822, Idaho Code, provided, the same shall be printed by the person or persons or organization or organizations under whose authority the measure is to be referred or initiated and circulated in the several counties of the state for the signatures of legal voters. Before such petitions shall be entitled to final filing and consideration by the secretary of state there shall be affixed thereto the signatures of legal voters equal in number to not less than six percent (6%) of the qualified electors of the state at the time of the last general election. [1933, ch. 210, § 5, p. 431; am. 1997, ch. 266, § 5, p. 756; am. 2007, ch. 202, § 7, p. 620.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 202, deleted the former last sentence, which read: "Provided, that the petition must contain a number of signatures of qualified electors from each of twenty-two (22) counties

equal to not less than six percent (6%) of the qualified electors at the time of the last general election in each of those twenty-two (22) counties."

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
"Legal voters" construed.

Constitutionality.

Because it violated the Equal Protection Clause by giving rural voters preferential treatment, the following language of § 34-1805 was struck: "Provided, that the petition must contain a number of signatures of qualified electors from each of twenty-two (22) counties equal to not less than six percent (6%) of the qualified electors at the time of the last general election in each of those twenty-two (22) counties." Idaho Coalition United for Bears v. Cenarrusa, 234 F. Supp. 2d 1159 (D. Idaho 2001) (see 2007 amendment).

Section 34-1805 violates the Equal Protection Clause because the few voters in a sparsely populated county had a power equal to the vastly larger number of voters who resided in a populous county, and an electoral system could not be based on treating unequal counties equally and making the elec-

toral determination dependent on the support of numbers of counties rather than numbers of people, but to the extent that Idaho wished to create a check on the will of the majority by a nondiscriminatory means, the Equal Protection Clause was no bar; thus, the court affirmed the trial court's grant of summary judgment in favor of advocacy groups that challenged the statute. Idaho Coalition United for Bears v. Cenarrusa, 342 F.3d 1073 (9th Cir. 2003) (see 2007 amendment).

"Legal Voters" Construed.

"Legal voters" within the meaning of this section must, in addition to the eligibility requirements, be registered to vote at the time they sign the initiative petition. Dredge Mining Control — Yes!, Inc. v. Cenarrusa, 92 Idaho 480, 445 P.2d 655 (1968).

34-1806. Binding of petition and signature sheets — Approved measures to be printed with session laws. — When any such initiative or referendum petition shall be offered for filing the secretary of state shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions. The secretary of state shall file and keep such petitions as official public records. The secretary of state shall cause every such measure so approved by the people to be printed with the general laws enacted by the next ensuing session of the state legislature with the date of the governor's proclamation declaring the same to have been approved by the people. [1933, ch. 210, § 6, p. 431; am. 1988, ch. 48, § 3, p. 66.]

34-1807. Circulation of petitions — Verification of petition and signature sheets — Comparison of signatures with registration oaths and records — Certain petitions and signatures void. — Any person who circulates any petition for an initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age. Each and every sheet of every such petition containing signatures shall be verified on the face thereof in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon, and as a part thereof:

State of Idaho,

ss.

County of

I,, being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age: that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence: I believe that each has stated his or her name, post-office address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of

Signed

Post-office address

Subscribed and sworn to before me this day of
(Notary Seal) Notary Public

Residing at

In addition to said affidavit the county clerk shall carefully examine said petitions and shall attach to the signature sheets a certificate to the secretary of state substantially as follows:

State of Idaho

ss.

County of

To the honorable, Secretary of State for the State of Idaho: I,, County Clerk of County, hereby certify that signatures on this petition are those of qualified electors.

Signed

County Clerk or Deputy.

(Seal of office)

The county clerk shall deliver the petition or any part thereof to the person from whom he received it with his certificate attached thereto as above provided. The forms herein given are not mandatory and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical error.

Any petition upon which signatures are obtained by a person not a resident of the state of Idaho and at least eighteen (18) years of age, shall be void. The definition of resident in section 34-107, Idaho Code, shall apply to the circulators of initiative and referendum petitions. In addition to [to] being a resident, a petition circulator shall be at least eighteen (18) years of age. [1933, ch. 210, § 7, p. 431; am. 1988, ch. 48, § 4, p. 66; am. 1997, ch. 266, § 6, p. 756; am. 1999, ch. 47, § 1, p. 109.]

STATUTORY NOTES

Compiler's Notes. — The word "to", in the last paragraph, was placed in brackets by the compiler as surplusage.

Effective Dates. — Section 3 of S.L. 1999, ch. 47 declared an emergency. Approved March 8, 1999.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

"Legal voter" construed.

Constitutionality.

Because the residency requirement of § 34-1807 was reasonably related to the state's interest in preventing fraud and ensuring that any circulator who commits fraud would be subject to the state's subpoena power, it was upheld as constitutional. *Idaho Coalition United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159 (D. Idaho 2001).

"Legal Voter" Construed.

"Legal voter" [now "qualified elector"] within the meaning of this section is one who, in addition to all other eligibility requirements, is registered to vote at the time of signing the initiative petition. *Dredge Mining Control — Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 445 P.2d 655 (1968).

34-1808. Filing of petition — Mandate — Injunction. — If the secretary of state shall refuse to accept and file any petition for the initiative

or for the referendum with the requisite number of signatures of qualified electors thereto attached, any citizen may apply, within ten (10) days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state shall then file it, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office. On a showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measure. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Supreme Court within ten (10) days after a decision is rendered. The district court of the fourth judicial district of the state of Idaho in and for Ada County shall have jurisdiction in all cases of measures to be submitted to the qualified electors of the state at large. [1933, ch. 210, § 8, p. 431; am. 1988, ch. 48, § 5, p. 66.]

STATUTORY NOTES

Cross References. — Injunction, I.R.C.P. Writs of mandate, § 7-301 et seq. 65(a).

34-1809. Review of initiative and referendum measures by attorney general — Certificate of review prerequisite to assignment of ballot title — Ballot title — Judicial review. — (1) After receiving a copy of the petition from the secretary of state as provided in section 34-1804, Idaho Code:

(a) The attorney general may confer with the petitioner and shall, within twenty (20) working days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate.

(b) The recommendations of the attorney general shall be advisory only and the petitioner may accept or reject them in whole or in part.

(c) The attorney general shall issue a certificate of review to the secretary of state certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall be issued whether or not the petitioner accepts such recommendations. The certificate of review shall be available for public inspection in the office of the secretary of state.

(2) Within fifteen (15) working days after the issuance of the certificate of review, the petitioner, if he desires to proceed with his sponsorship, shall file the measure, as herein provided, with the secretary of state for assignment of a ballot title and the secretary of state shall thereupon submit to the attorney general two (2) copies of the measure filed.

(a) Within ten (10) working days after receiving copies of the petition, the attorney general shall provide ballot titles as provided for below and return one (1) copy of the petition to the secretary of state, with its ballot title.

(b) A copy of the ballot title as prepared by the attorney general shall be furnished by the secretary of state with the approved form of any initiative or referendum petition, as provided herein, to the person or persons or organization or organizations under whose authority the measure is initiated or referred.

(c) The ballot titles shall be used and printed on the covers of the petition when in circulation; the short title shall be printed in type not less than twenty (20) points on the covers of all such petitions circulated for signatures.

(d) The ballot title shall contain:

(i) Distinctive short title not exceeding twenty (20) words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition.

(ii) A general title expressing in not more than two hundred (200) words the purpose of the measure.

(iii) The ballot title shall be printed with the numbers of the measure on the official ballot.

(e) In making the ballot title the attorney general shall, to the best of his ability, give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure.

(3) Any person dissatisfied with the ballot title or the short title provided by the attorney general for any measure, may appeal from his decision to the supreme court by petition, praying for a different title and setting forth the reason why the title prepared by the attorney general is insufficient or unfair.

(a) No appeal shall be allowed from the decision of the attorney general on a ballot title unless made within twenty (20) days after the ballot title is filed in the office of the secretary of state; provided however, that this section shall not prevent any later judicial proceeding to determine the sufficiency of such title, nor shall it prevent any judicial decision upon the sufficiency of such title.

(b) A copy of every such ballot title shall be served by the secretary of state upon the person offering or filing such initiative or referendum petition, or appeal. The service of the ballot title may be by mail, telegraph or facsimile and shall be made forthwith when it is received from the attorney general by the secretary of state.

(c) The supreme court shall thereupon examine said measure, hear argument, and in its decision thereon certify to the secretary of state a ballot title and a short title for the measure in accord with the intent of this section. The secretary of state shall print on the official ballot the title thus certified to him.

(4) Any qualified elector of the state of Idaho may, at any time after the attorney general has issued a certificate of review, bring an action in the supreme court to determine the constitutionality of any initiative. [1933, ch. 210, § 9, p. 431; am. 1979, ch. 106, § 1, p. 340; am. 1988, ch. 48, § 6, p. 66; am. 1994, ch. 400, § 1, p. 1263; am. 1997, ch. 266, § 7, p. 756; am. 2003, ch. 147, § 1, p. 423.]

JUDICIAL DECISIONS

ANALYSIS

Justiciability.

Title.

—Defective.

—Long.

—Not prejudicial.

—Mandamus to compel.

—Preparation.

—Short.

—Contents.

—Not prejudicial.

—Purpose.

—Validity.

Justiciability.

This section cannot compel the Idaho Supreme Court to decide a case that lacks a justiciable controversy. *Noh v. Cenarrusa*, 137 Idaho 798, 53 P.3d 1217 (2002).

The Supreme Court would take cognizance of the fact that at general election on November 4, initiative measure in question respecting right to work regardless of membership or nonmembership in labor organization had been duly voted on by the electorate and defeated thus rendering moot questions involved in appeal of cause seeking to enjoin the placing of such initiative measure on the ballot on the ground of noncompliance with statutory requirements as to signing and certification of petition. *Dorman v. Young*, 80 Idaho 435, 332 P.2d 480 (1958).

Title.

—Defective.

Where petition was filed for an initiated measure concerning the right to work whether or not a person was a member of a labor union, a short title furnished by attorney-general entitled "The Right to Work Initiative Proposed" was defective, since title did not refer to membership in a labor union. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Where attorney general's short title failed to capture the distinctive characteristics of the proposed initiative in that it inaccurately informed voters that the purpose of the initiative was to create a law prohibiting post-viability abortions, with exceptions, but, in fact, did not create a new law but rather deleted an exception to the existing ban on post-viability abortions, added a new exception to the ban, created new civil causes of action, new criminal liabilities and repealed existing criminal penalties against pregnant women who violated the chapter, the short title was not the product of an analysis of the initiative that distinguished the initiative from existing abortion laws and, as such, it required redrafting. *Buchin v. Lance*, 128

Idaho 266, 912 P.2d 634 (1995).

Attorney general's long title, which failed to provide voters with an accurate description of the purposes of initiative which proposed to repeal existing law imposing criminal penalties against pregnant women who violate the chapter and to create a new civil cause of action in which any person who violated the chapter could potentially be sued for "appropriate relief," and proposed to provide civil relief against medical abortion providers despite the fact that any party consented to injuries caused by the abortion, was insufficient, and, as such, required redrafting. *Buchin v. Lance*, 128 Idaho 266, 912 P.2d 634 (1995).

—Long.

—Not Prejudicial.

Attorney General's long title of proposed initiative which would establish various state policies towards homosexuality, which expressed the purpose of the initiative by stating that it was an initiative relating to homosexuality and the state's authority to afford homosexuals minority status and then went through each section of the measure, summarizing the specific purpose of each section, expressed the purpose of the initiative without being argumentative or prejudicial. *ACLU, Idaho Chapter v. Echohawk*, 124 Idaho 147, 857 P.2d 626 (1993).

—Mandamus to Compel.

Mandamus will lie to compel the attorney-general to provide a ballot title for a referendum petition. The duty of the attorney-general in this regard is ministerial. *Girard v. Miller*, 55 Idaho 430, 43 P.2d 510 (1935).

—Preparation.

Supreme Court cannot prepare a title itself but can only determine that a particular title chosen is defective. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Legislature was authorized to delegate to attorney-general the task of selecting short title for initiated measures. In re Idaho State

Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Attorney-general in determining short title is performing a quasi judicial function. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

—Short.

—Contents.

Short title must set forth the distinguishing characteristics of the proposed measure so that the prospective signer will know what he is approving. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

—Not Prejudicial.

Attorney General's short title, "An act establishing state policies regarding homosexuality" captured the distinctive characteristic of the proposed initiative using language by which it was commonly referred to as required by this section and was not argumentative or prejudicial, but instead was a true and impartial statement of the initiative. ACLU, Idaho Chapter v. Echohawk, 124 Idaho 147, 857 P.2d 626 (1993).

—Purpose.

The purpose of the short title requirements of this section is to acquaint prospective signers with the distinctive characteristics of the proposed measure. ACLU, Idaho Chapter v. Echohawk, 124 Idaho 147, 857 P.2d 626 (1993).

—Validity.

Petition to determine validity of title selected by attorney-general is in the nature of a proceeding for a writ of certiorari or review. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Supreme Court in taking jurisdiction to determine validity of short title must do so with the intent of securing substantial justice. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Where attorney general's short and long titles did not meet the demands of this section and of existing case law, any signatures collected by the circulation of a petition with the invalid titles was not valid. Buchin v. Lance, 128 Idaho 266, 912 P.2d 634 (1995).

34-1810. Printing and designation of ballot titles on official ballots. — (1) The secretary of state, at the time he furnishes to the county clerks of the several counties certified copies of the names of candidates for state and district offices shall furnish to each of said county clerks a certified copy of the ballot titles and numbers of the several measures to be voted upon at the ensuing general election, and he shall use for each measure the ballot title designated in the manner herein provided.

(a) Such ballot title shall not resemble, so far as to probably create confusion, any such title previously filed for any measure to be submitted at that election.

(b) The ballot shall include a clear and concise statement as to the effect of a "yes" or "no" vote, prepared jointly by the attorney general and secretary of state.

(2) The secretary of state shall number the measures consecutively beginning with number (1), in the order in which the measures were finally filed with the secretary. The measures shall be designated on the ballot as a "Proposition One," "Proposition Two," et cetera. [1933, ch. 210, § 10, p. 431; am. 1988, ch. 48, § 7, p. 66; am. 2003, ch. 147, § 2, p. 423.]

STATUTORY NOTES

Effective Dates. — Section 8 of S.L. 1988, ch. 48 declared an emergency. Approved March 18, 1988.

34-1811. Manner of voting — Procedure when conflicting measures approved. — The manner of voting upon measures submitted to the people shall be the same as is now or may be required and provided by law; no measure shall be adopted unless it shall receive an affirmative majority

of the aggregate number of votes cast on such measure. If two (2) or more conflicting laws shall be approved by the people at the same election, the law receiving the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such law may not have received the greatest majority of affirmative votes. If two (2) or more conflicting amendments to the constitution shall be approved by the people at the same election, the amendment which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such amendment may not have received the greatest majority of affirmative votes. [1933, ch. 210, § 11, p. 431.]

STATUTORY NOTES

Cross References. — Canvassing of returns, § 34-1813.

34-1812. Pamphlet and arguments may be printed — Distribution to votes. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which am. 1978, ch. 93, § 1, p. 178, was repealed by comprised S.L. 1933, ch. 210, § 12, p. 431; S.L. 1979, ch. 135, § 1.

34-1812A. Arguments concerning initiative and referendum measures. — Any voter or group of voters may on or before July 20 prepare and file an argument, not to exceed five hundred (500) words, for or against any measure. Such argument shall not be accepted unless accompanied by the name and address or names and addresses of the person or persons submitting it, or, if submitted on behalf of an organization, the name and address of the organization and the names and addresses of at least two (2) of its principal officers.

If more than one (1) argument for or more than one (1) argument against any measure is filed within the time prescribed, the secretary of state shall select one (1) of the arguments for printing in the voters' pamphlets. In selecting the argument the secretary of state shall be required to give priority in the order named to the arguments of the following:

- (1) The proponent of the initiative or referendum petition.
- (2) Bona fide associations of citizens.
- (3) Individual voters. [I.C., § 34-1812A, as added by 1979, ch. 135, § 2, p. 430.]

34-1812B. Submission of rebuttal arguments. — When the secretary of state has received the arguments which will be printed in the voters' pamphlet, the secretary of state shall immediately send copies of the arguments in favor of the proposition to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor. The authors may prepare and submit rebuttal arguments not exceeding two hundred and fifty (250) words. The rebuttal arguments must be filed no later than August 1. Rebuttal arguments shall be printed in the

same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut. [I.C., § 34-1812B, as added by 1979, ch. 135, § 3, p. 430.]

34-1812C. Voters' pamphlet. — (1) Not later than September 25 before any regular general election at which an initiative or referendum measure is to be submitted to the people, the secretary of state shall cause to be printed a voters' pamphlet which shall contain the following:

(a) A complete copy of the title and text of each measure with the number and form in which the ballot title thereof will be printed on the official ballot;

(b) A copy of the arguments and rebuttals for and against each state measure.

(2) The secretary of state shall mail or distribute a copy of the voters' pamphlet to every household in the state. Sufficient copies of the voters' pamphlet shall also be sent to each county clerk. The county clerk and the secretary of state shall make copies of the voters' pamphlet available upon request.

(3) The voters' pamphlet shall be printed according to the following specifications:

(a) The pages of the pamphlet shall be not smaller than 6 x 9 inches in size;

(b) It shall be printed in clear readable type, no less than 10-point, except that the text of any measure may be set forth in no less than 7-point type;

(c) It shall be printed on a quality and weight of paper which in the judgment of the secretary of state best serves the voters;

(d) If the material described in subsections (a) and (b) of this section is combined in a single publication with constitutional amendments, the entire publication shall be treated as a legal notice. [I.C., § 34-1812C, as added by 1979, ch. 135, § 4, p. 430; am. 1984, ch. 114, § 1, p. 258.]

STATUTORY NOTES

Compiler's Notes. — From its context, the reference, in paragraph (3)(d), to "subsections (a) and (b) of this section" probably should be to "paragraphs (a) and (b) of subsection (1) of this section".

34-1813. Counting, canvassing and return of votes. — The votes on measures and questions shall be counted, canvassed and returned by the regular boards of judges, clerks and officers, as votes for candidates are counted, canvassed and returned, and the abstract made by the several county auditors of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided for abstract of votes for state and county officers. It shall be the duty of the secretary of state, in the presence of the governor, to proceed within thirty (30) days after the election, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against such measure and question, and declaring such measures as are approved

by a majority of those voted thereon to be in full force and effect as the law of the state of Idaho from the date of said proclamation; provided, that if two (2) or more measures shall be approved at said election which are known to conflict with each other or to contain conflicting provisions he shall also proclaim which is paramount in accordance with the provisions of sections 34-1801 — 34-1822. [1933, ch. 210, § 13, p. 431.]

STATUTORY NOTES

Cross References. — Canvass of votes at general elections, § 34-1201 et seq. Procedure when conflicting measures approved, § 34-1811.

JUDICIAL DECISIONS

Cited in: *Dorman v. Young*, 80 Idaho 435, 332 P.2d 480 (1958).

34-1814. Who may sign petition — Effect of wrongful signing — Penalty for wrongful signing. — Every person who is a qualified elector of the state of Idaho may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person wilfully violating any provision of this statute, shall, upon conviction thereof be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the penitentiary not exceeding two (2) years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had. Any such wrongful signatures are null and void and shall not be counted as a qualified signature. Any person circulating a petition, who knows, or who in the exercise of reasonable care should know, that a signature is forged and who shall thereafter fail to strike through and thereby void such signature, and any person in a position of supervision of such person who suffers or permits a forged signature to remain on a petition shall pay a fine of not less than one thousand dollars (\$1,000) for each such signature. [1933, ch. 210, § 14, p. 431; am. 1997, ch. 266, § 8, p. 756.]

JUDICIAL DECISIONS

“Qualified Elector” Construed.

A “qualified elector” within the meaning of this section is one who, in addition to all other eligibility requirements, is registered to vote

at the time of signing the initiative petition. *Dredge Mining Control — Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 445 P.2d 655 (1968).

34-1814A. Petition circulators receiving compensation and volunteers. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which 1997, ch. 266, § 9, p. 756, was repealed by comprised I.C., § 34-1814A, as added by S.L. 1999, ch. 47, § 2, effective March 8, 1999.

34-1815. False statements spoken or written concerning petition unlawful — Failure to disclose material provisions. — It shall be unlawful for any person to wilfully or knowingly circulate, publish or exhibit any false statement or representation, whether spoken or written, or to fail to disclose any material provision in a petition, concerning the contents, purport or effect of any petition mentioned in sections 34-1801A through 34-1822, Idaho Code, for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition. It shall be unlawful for any person to solicit or obtain any signature on a petition without first showing the signer both the short title and the general title as defined in section 34-1809, Idaho Code, so that the signer has an opportunity to read them before signing the petition.

Any signature obtained without compliance with this section is null and void. [1933, ch. 210, § 15, p. 431; am. 1997, ch. 266, § 10, p. 756.]

STATUTORY NOTES

Cross References. — Penal provision, § 34-1822.

JUDICIAL DECISIONS**Constitutionality.**

The first sentence in this section fails to withstand strict scrutiny; it is unconstitutionally vague in part, and creates, in another

part, an unconstitutional strict liability offense. *Idaho Coalition United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159 (D. Idaho 2001).

34-1816. Filing petition with false signatures unlawful. — It shall be unlawful for any person to file in the office of any officer provided by law to receive such filing any petition mentioned in sections 34-1801 — 34-1822, to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto. [1933, ch. 210, § 16, p. 431.]

STATUTORY NOTES

Cross References. — Penal provision, § 34-1822.

34-1817. Circulating petition with false, forged or fictitious names unlawful. — It shall be unlawful for any person to circulate or

cause to be circulated any petition mentioned in sections 34-1801 — 34-1822, knowing the same to contain false, forged or fictitious names. [1933, ch. 210, § 17, p. 431.]

STATUTORY NOTES

Cross References. — Penal provision,
§ 34-1822.

34-1818. False affidavit by any person unlawful. — It shall be unlawful for any person to make any false affidavit concerning any petition mentioned in sections 34-1801 — 34-1822, or the signatures appended thereto. [1933, ch. 210, § 18, p. 431.]

STATUTORY NOTES

Cross References. — Penal provision,
§ 34-1822.

34-1819. False return, certification or affidavit by public official unlawful. — It shall be unlawful for any public official or employee knowingly to make any false return, certification or affidavit concerning any petition mentioned in sections 34-1801 — 34-1822, or the signatures appended thereto. [1933, ch. 210, § 19, p. 431.]

STATUTORY NOTES

Cross References. — Penal provision,
§ 34-1822.

34-1820. Signing more than once or when not qualified unlawful. — It shall be unlawful for any person to knowingly sign his own name more than once to any petition mentioned in sections 34-1801 — 34-1822, or to sign his name to any such petition knowing himself at the time of such signing not to be qualified to sign the same. [1933, ch. 210, § 20, p. 431.]

STATUTORY NOTES

Cross References. — Penal provision,
§ 34-1822.

34-1821. Felonious acts enumerated. — It shall be a felony for any person to offer, propose or threaten to do any act mentioned in this section of or concerning any petition mentioned in sections 34-1801 — 34-1822, for any pecuniary reward or consideration: (a) To offer, propose, threaten or attempt to sell, hinder or delay any petition or any part thereof or of any signatures thereon mentioned in sections 34-1801 — 34-1822; (b) To offer, propose, or threaten to desist, for a valuable consideration, from beginning, promoting or circulating any petition mentioned in sections 34-1801 — 34-1822, or soliciting signatures to any such petition; (c) To offer, propose, attempt or threaten in any manner or form to use any petition or power of

promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest. [1933, ch. 210, § 21, p. 431.]

STATUTORY NOTES

Cross References. — Penal provision, § 34-1822.

JUDICIAL DECISIONS

Constitutionality.

Because there was no evidence that paying petition circulators on a per-signature basis invited cheating, paragraph (a) of this section was declared unconstitutional as violative of

the First Amendment. Paragraphs (b) and (c) were not challenged. *Idaho Coalition United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159 (D. Idaho 2001).

34-1822. Penalty for violations. — Any person, either as principal or agent, violating any of the provisions of sections 34-1801 — 34-1822 shall be punished upon conviction by imprisonment in the penitentiary or in the county jail not exceeding two (2) years, or by a fine not exceeding \$5000.00, or by both, excepting that imprisonment in the penitentiary and punishment by a fine shall be the only penalty for violation of any provision of section 34-1821. [1933, ch. 210, § 22, p. 431.]

34-1823. Severability. — In the event that any part of chapter 18, title 34, Idaho Code, shall for any reason be determined void or unenforceable in any part thereof, the remainder thereof shall remain in full force and effect. [I.C., § 34-1823, as added by 1997, ch. 266, § 11, p. 756.]

STATUTORY NOTES

Effective Dates. — Section 12 of S.L. 1997, ch. 266 read: "This act shall be in full force and effect on and after July 1, 1997, and this act shall apply to all initiative petitions

that have been submitted with qualifying signatures pursuant to section 34-1804, Idaho Code, on and after July 1, 1997."

CHAPTER 19

CONGRESSIONAL DISTRICTS

SECTION.

34-1901. Number of congressional districts.

34-1902. First congressional district.

SECTION.

34-1903. Second congressional district.

34-1904. [Repealed.]

34-1901. Number of congressional districts. — For the election of representatives in Congress, the state of Idaho is divided into two (2) congressional districts. [1917, ch. 121, § 1, p. 408; compiled and reen. C.L. 6:1; C.S., § 66; I.C.A., § 33-1601.]

34-1902. First congressional district. — The names, numbers and boundaries of the counties and precincts herein referred to in describing the

area included within the first congressional district shall be as the same existed for the general election of 1988. The first congressional district comprises the counties of Adams, Benewah, Boise, Bonner, Boundary, Canyon, Clearwater, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Owyhee, Payette, Shoshone, Valley, Washington and counties hereafter created therefrom and the following precincts within Ada County and precincts hereafter created therefrom: No. 2, No. 8, No. 12, No. 15, No. 16, No. 17, No. 20, No. 24, No. 28, No. 29, No. 32, No. 34, No. 36, No. 38, No. 39, No. 42, No. 49, No. 50, No. 52, No. 53, No. 54, No. 55, No. 56, No. 57, No. 58, No. 59, No. 60, No. 63, No. 65, No. 66, No. 67, No. 68, that portion of No. 69 lying south and west of Interstate Highway No. 84, No. 70, No. 71, No. 72, No. 73, No. 74, No. 75, No. 76, No. 77, No. 78, No. 81, No. 82, No. 85, No. 86, No. 87, No. 88, No. 89, No. 90, No. 91, No. 92, No. 93, No. 94, No. 95, No. 96, No. 97, No. 98, No. 99, No. 100, No. 101, No. 102, No. 103, No. 104, No. 105, No. 106, No. 107, No. 108, No. 109, that portion of No. 111 lying south and west of Interstate Highway No. 84, No. 112, No. 116, No. 117, No. 118, No. 119, No. 120, No. 122 and No. 123. [I.C., § 34-1902, as added by 1981 (Ex. Sess.), ch. 1, § 3, p. 4; am. 1992, ch. 1, § 1, p. 3.]

STATUTORY NOTES

Prior Laws. — Former § 34-1902, which comprised 1917, ch. 121, § 2, p. 408; compiled and reen. C.L., 6:2; C.S., § 67; I.C.A., § 33-1602; am. 1965 (E.S.), ch. 5, § 1, p. 21; am. 1971 (E.S.), ch. 8, § 1, p. 18, was repealed by S.L. 1981 (Ex. Sess.), ch. 1, § 1.

Compiler's Notes. — Section 3 of S.L. 1992, ch. 1 read: "The congressional districts as they existed for the general election of 1990 shall continue in full force and effect for all purposes of the One Hundred Second Congress."

34-1903. Second congressional district. — The names, numbers and boundaries of the counties and precincts herein referred to in describing the area included within the second congressional district shall be as the same existed for the general election of 1988. The second congressional district comprises the counties of Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Elmore, Franklin, Fremont, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton, Twin Falls, and counties hereafter created therefrom, and the following precincts within Ada County and precincts hereafter created therefrom: No. 1, No. 3, No. 4, No. 5, No. 6, No. 7, No. 9, No. 10, No. 11, No. 13, No. 14, No. 18, No. 19, No. 21, No. 22, No. 23, No. 25, No. 26, No. 27, No. 30, No. 31, No. 33, No. 35, No. 37, No. 40, No. 41, No. 43, No. 44, No. 45, No. 46, No. 47, No. 48, No. 51, No. 61, No. 62, No. 64, that portion of No. 69 lying north and east of Interstate Highway No. 84, No. 79, No. 80, No. 83, No. 84, No. 110, that portion of No. 111 lying north and east of Interstate Highway No. 84, No. 113, No. 114, No. 115 and No. 121. [I.C., § 34-1903, as added by 1981 (Ex. Sess.), ch. 1, § 4, p. 4; am. 1992, ch. 1, § 2, p. 3.]

STATUTORY NOTES

Prior Laws. — Former § 34-1903, which comprised 1917, ch. 121, § 3, p. 408; compiled and reen. C.L. 6:3; C.S. § 68; I. C. A., § 33-1603; am. 1965 (E.S.), ch. 5, § 2, p. 21; am. 1971 (E.S.), ch. 8, § 2, p. 18, was repealed by S.L. 1981 (Ex. Sess.), ch. 1, § 2.

Compiler's Notes. — Section 3 of S.L. 1992, ch. 1 read: "The congressional districts as they existed for the general election of 1990 shall continue in full force and effect for all

purposes of the One Hundred Second Congress."

Effective Dates. — Section 4 of S.L. 1992, ch. 1, read: "An emergency existing therefore, which emergency is hereby declared to exist, the provisions of Section 1 and Section 2 of this act shall be in full force and effect on and after passage and approval for all purposes of the One Hundred Third and succeeding Congresses." Approved January 28, 1992.

34-1904. Residence of candidates within district. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1917, ch. 121, § 4, p. 409; reen. C.L. 6:4; C.S., § 69; I.C.A., § 33-1604, was

repealed by S.L. 1996, ch. 28, § 28, effective February 15, 1996.

CHAPTER 20

ELECTION CONTESTS OTHER THAN LEGISLATIVE AND STATE
EXECUTIVE OFFICES

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- 34-2001. Grounds of contest.
- 34-2001A. Bond election and mill levy contests — Time for filing — Validation of elections and bonds.
- 34-2002. Term incumbent defined.
- 34-2003. Misconduct of judges.
- 34-2004. Jurisdiction — Contests over judicial offices.
- 34-2005. Jurisdiction — Removal of county seats and special questions.
- 34-2006. Jurisdiction — County and precinct officers.
- 34-2007. Who may contest elections.
- 34-2008. Complaint and security for costs.
- 34-2009. Complaint — Specific allegations.
- 34-2010. Issuance of summons.
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- 34-2012. Postponement of trial.
- 34-2013. Procedure in general.
- 34-2014. Testimony — Subpoena for witnesses.
- 34-2015. Amendments.

SECTION.

- 34-2016. Form and service of process.
- 34-2017. Voters to testify as to qualifications.
- 34-2018. Inspection of ballots and poll books.
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- 34-2020. Liability for costs.
- 34-2021. Form of judgment.
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- 34-2023. Order for possession.
- 34-2024. Election declared void.
- 34-2025. Appeal and supersedeas.
- 34-2026. Judgment of affirmance.
- 34-2027. Cost of bond on appeal.
- 34-2028. Contest of nomination at primaries.
- 34-2029. Jurisdiction over primary contest.
- 34-2030. Filing of affidavit.
- 34-2031. Security for costs.
- 34-2032. Fraud or error by the election official.
- 34-2033. Discovery.
- 34-2034. Remedies.
- 34-2035. Appeals.
- 34-2036. Cost on appeal.

34-2001. Grounds of contest. — The election of any person to any public office, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

1. For malconduct, fraud, or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board sufficient to change the result.

2. When the incumbent was not eligible to the office at the time of the election.

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights.

4. When the incumbent has given or offered to any elector, or any judge, clerk or canvasser of the election, any bribe or reward in money or property for the purpose of procuring his election, or has committed any violation as set out in chapter 23, title 18, Idaho Code.

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result.

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result.

7. When the incumbent is in default as a collector and custodian of public money or property.

8. For any cause which shows that another person was legally elected. [1890-1891, p. 57, § 132; reen. 1899, p. 33, § 119; reen. R.C. & C.L., § 5026; C.S., § 7274; I.C.A., § 33-1701; am. 1982, ch. 209, § 1, p. 571.]

STATUTORY NOTES

Cross References. — Jurisdiction and proceedings in contest of state, executive, and legislative offices, § 34-2101 et seq.

Recall elections, § 34-1701 et seq.

School elections, § 33-401 et seq.

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JUDICIAL DECISIONS

ANALYSIS

Bond elections.

Burden of proof.

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Eligibility of voters.

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Jurisdiction.

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Nature of proceedings.

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Bond Elections.

The remedy provided by this section and sections 34-2005 and 34-2008 providing a statutory procedure for the contest of a special bond election is exclusive as to matters that might be contested. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

Burden of Proof.

Burden of proof is on contestant to show for whom alleged illegal votes were cast. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

Definition of "people."

Word "people" in clause "any proposition submitted to a vote of the people may be contested," means the persons qualified to

vote at the election. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

Eligibility of Candidate.

Ineligibility of a candidate for office at the time of election because of holding another office, the term of which will expire before the beginning of the term of the office for which he is a candidate, is not ground for contest of such candidate's election under subsection 2 of this section. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

Eligibility of Voters.

In special bond election held on June 8, 1950, for construction of hospital, restriction of voting to persons, whose names appeared on 1949 tax rolls was proper, since 1950 tax

rolls had not been completed at the time of the election. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

Evidence.

It was reversible error not to admit in evidence ballots, ballot boxes, ballot box keys and election returns offered in evidence by appellant where there was nothing to indicate such evidence was not substantially in the same condition as at the time of the election, such evidence having been rejected by the trial court on the ground that it was not admissible in a quo warranto proceeding to try title to an office, only being admissible in an election contest. *Tiegs v. Patterson*, 81 Idaho 46, 336 P.2d 687 (1959).

Irrigation District Officers.

Directors of irrigation district are public officers whose election may be contested under this section. *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

Water master of irrigation district is public officer whose right to office may be called in question by this section. *Whitten v. Chapman*, 45 Idaho 653, 264 P. 871 (1928).

Where appellant alleged in his complaint that he had received a majority of the votes cast in an election to choose a director from division of irrigation district, both appellee and appellant having been nominated for such office and their names appearing on the ballot, and he brought the action under the usurpation statute and has not in anywise contested the election, the filing of such action later than the twenty-day period provided for contesting an election would not be controlling as such limitation period was provided in the election contest statute, even though the secretary of the district had issued a certificate of election. *Tiegs v. Patterson*, 79 Idaho 365, 318 P.2d 588 (1957).

Judicial Candidates.

A statute providing for nonpartisan nomination of district judges, under which the primary constituted a general election without any subsequent election for such offices unless no candidate or sufficient candidates to fill the offices to be filled received the majority of all votes cast, was not open to the objection that the election could not be considered an election as distinguished from a nomination because the statute made no provision for contesting a primary election, since election

did not constitute an "election" as to any candidate who received a majority and the highest number of votes cast, and as to such candidate the contest statute was applicable. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

Jurisdiction.

District court had jurisdiction of proceedings by taxpayer to contest result of election to determine whether county commissioners should issue bonds to build a hospital based on contention that nontaxpayers were permitted to vote, regardless of whether suit was in equity or in law. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

Laches by Contestant.

Where there was ample time and opportunity between the primary and the general election to have had any of the alleged disqualifications of the candidate for the office of prosecuting attorney heard or passed on, but contestant neglected to take any action whatever until after the election, contestant could not be heard to urge such objections, which, if permitted, would disfranchise thousands of legal voters. *McNamara v. Wayne*, 67 Idaho 410, 182 P.2d 960 (1947).

Nature of Proceedings.

An election contest is of purely statutory origin, and is within the direction, control, and management of the political power of the state, and manner of conducting such contest and of determining questions arising thereunder is within the authority and control of the political power of state government as distinguished from the judicial power and authority thereof. *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908).

Time of Eligibility.

The provisions of this section that one of the grounds for contesting an election is the ineligibility of the incumbent for office at the time of the election refers to the final determinative selection to the office, and not to the nomination in a primary election. *Strecker v. Smith*, 66 Idaho 593, 164 P.2d 192 (1945).

Cited in: *Ball v. Campbell*, 6 Idaho 754, 59 P. 559 (1899); *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908); *Bradfield v. Avery*, 16 Idaho 769, 102 P. 687 (1909); *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

34-2001A. Bond election and mill levy contests — Time for filing — Validation of elections and bonds. — A. The provisions of this chapter with respect to the contest of elections shall be applicable to bond elections conducted by cities, counties, school districts and water and sewer districts, and to elections conducted by school districts for mill levy increases as authorized by sections 33-802, 33-803 and 33-804, Idaho Code.

Any such contest shall be regarded as one contesting the outcome of the vote on the bond or mill levy proposition, rather than election to office, and the public entity calling the election rather than a person declared to have been elected to office, shall be regarded as the defendant.

B. When the validity of any bond or mill levy election is contested upon any of the grounds enumerated in section 34-2001, Idaho Code, or upon any other grounds whatsoever the plaintiff or plaintiffs must, within forty (40) days after the votes are canvassed and the results thereof declared, file in the proper court a verified written complaint setting forth, in addition to the other requirements of this chapter, the following:

- (1) The name of the party contesting the bond or mill levy election, and that he is an elector of the public entity conducting the bond or mill levy election.
- (2) The proposition or propositions voted on at the election which are contested.
- (3) The particular grounds of such contest.

C. No such election contest shall be maintained and no bond or mill levy election shall be set aside or held invalid unless a complaint is filed as permitted hereunder within the period prescribed in this section. As to bond or mill levy elections which have been held prior to the effective date of this act, no such contest shall be maintained wherein it is alleged that the election should be set aside or held on any ground enumerated in section 34-2001, Idaho Code, or on any other ground, unless such election contest be filed as herein provided within forty (40) days from and after the effective date of this act.

D. All bond elections conducted by cities, counties, school districts and water and sewer districts prior to the effective date of this act, and all proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is being contested at the time this act takes effect, or any election the legality of which is contested within the forty (40) day period from and after the effective date of this act. [I.C., § 34-2001A, as added by 1969, ch. 208, § 1, p. 604; am. 1976, ch. 291, § 1, p. 1008.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1969, ch. 208 declared an emergency. Approved March 21, 1969.

JUDICIAL DECISIONS

ANALYSIS

City as defendant.
Failure to file bond.

City as Defendant.

Only a city could be sued in conjunction with an election contest over a tax levy passed. *Bell v. City of Kellogg*, 922 F.2d 1418 (9th Cir. 1991).

Failure to File Bond.

Taxpayer's claim against an election, which brought about the passage of a tax levy, based on fraud, misrepresentation and breach of trust and fiduciary duty fell within the election contest statute and was barred for failure to post a bond. *Bell v. City of Kellogg*, 922 F.2d 1418 (9th Cir. 1991).

Filing of a bond in a school district election contest is not jurisdictional, and it can be filed at any time after a clerk or district judge has determined the appropriate amount due; therefore, a district court erred in dismissing a complaint filed by several citizens without allowing them to post a bond. *Johnson v. Boundary Sch. Dist. # 101*, 138 Idaho 331, 63 P.3d 457 (2003).

Cited in: *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970).

34-2002. Term incumbent defined. — The term "incumbent" in this chapter means the person whom the canvassers declare elected. [1890-1891, p. 57, § 133; reen. 1899, p. 33, § 120; reen. R.C. & C.L., § 5027; C.S., § 7275; I.C.A., § 33-1702.]

34-2003. Misconduct of judges. — When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election, unless the vote of the precinct, township or ward would change the result as to that office. [1890-1891, p. 57, § 134; reen. 1899, p. 33, § 121; reen. R.C. & C.L., § 5028; C.S., § 7276; I.C.A., § 33-1703.]

34-2004. Jurisdiction — Contests over judicial offices. — The Supreme Court shall hear and determine contests of the election of judges of the Supreme Court and appellate court and judges of the district courts, and in case they shall disagree, the governor shall act with them in determining the contest, but no judge of the Supreme Court shall sit upon the hearing of any case in which he is a party. The appropriate district court shall hear and determine contests of the retention election of judges of the magistrate courts. [1890-1891, p. 57, § 137; am. 1899, p. 33, § 124; reen. R.C. & C.L., § 5029; C.S., § 7277; I.C.A., § 33-1704; am. 1982, ch. 209, § 2, p. 571.]

JUDICIAL DECISIONS**Election of District Judge.**

Under this section Supreme Court has original jurisdiction in the matter of a contest of the election of district judge. *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908).

Cited in: *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

34-2005. Jurisdiction — Removal of county seats and special questions. — The district courts of the respective counties shall hear and determine contests of election in regard to the removal of county seats, and in regard to any other subject which may by law be submitted to the vote of the people of the county, and the proceedings therein shall be conducted as near as may be hereinafter provided for contesting the election of county officers. [1890-1891, p. 57, § 138; reen. 1899, p. 33, § 125; reen. R.C. & C.L., § 5030; C.S., § 7278; I.C.A., § 33-1705.]

STATUTORY NOTES

Cross References. — Contests of right to sign petition in removal cases, § 31-205.

JUDICIAL DECISIONS

Bond Elections.

The remedy provided by this section and sections 34-2001 and 34-2008, providing a statutory procedure for the contest of a special bond election, is exclusive as to matters that might be contested. *Harrison v. Board of*

County Comm'rs, 68 Idaho 463, 198 P.2d 1013 (1948).

Cited in: *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

34-2006. Jurisdiction — County and precinct officers. — The district courts shall hear and determine contests of all other county, township and precinct officers, and officers of the cities and incorporated villages within the county. [1890-1891, p. 57, § 139; reen. 1899, p. 33, § 126; reen. R.C. & C.L., § 5031; C.S., § 7279; I.C.A., § 33-1706.]

JUDICIAL DECISIONS

Irrigation District Officers.

Jurisdiction to try and determine contest over right of elected district officers of irriga-

tion district to hold office is lodged in district courts of state. *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

34-2007. Who may contest elections. — The election of any person declared elected to any office, other than executive state officers and members of the legislature, may be contested by any elector of the state, judicial district, county, township, precinct, city or incorporated village in and for which the person is declared elected. [1890-1891, p. 57, § 148; reen. 1899, p. 33, § 135; reen. R.C. & C.L., § 5032; C.S., § 7280; I.C.A., § 33-1707.]

JUDICIAL DECISIONS

Cited in: *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

34-2008. Complaint and security for costs. — The contestants shall file in the proper court, within twenty (20) days after the votes are canvassed, a complaint setting forth the name of the contestant, and that he is an elector competent to contest such election; the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which complaint shall be verified by the affidavit of the contestant, that the causes set forth are true as he verily believes. The contestant must also file a bond, with security to be approved by the clerk of the court or district judge, as the case may be, conditioned to pay all costs in case the election be confirmed, the complaint dismissed, or the prosecution fail. [1890-1891, p. 57, § 149; reen. 1899, p. 33, § 136; reen. R.C. & C.L., § 5033; C.S., § 7281; I.C.A., § 33-1708.]

JUDICIAL DECISIONS

ANALYSIS

Bond elections.
Complaint.
Failure to file bond.

Bond Elections.

The remedy provided by this section and sections 34-2001 and 34-2005, providing a statutory procedure for the contest of a special bond election, is exclusive as to matters that might be contested. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

Complaint.

Complaint in election contest which charges a number of omissions by judges in permitting certain things to be done, but fails to charge that such acts were done with the knowledge or consent of the judges, is insufficient. *Ball v. Campbell*, 6 Idaho 754, 59 P. 559 (1899).

Complaint to contest an election under this subdivision must allege and show facts which disqualify incumbent, or person declared elected, at time of election. *Bradfield v. Avery*, 16 Idaho 769, 102 P. 687 (1909).

Where appellant alleged in his complaint

that he had received a majority of the votes cast in an election to choose a director from division of irrigation district, both appellee and appellant having been nominated for such office and their names appearing on the ballot, and he brought the action under the usurpation statute and has not in anywise contested the election, the filing of such action later than the twenty day period provided for contesting an election would not be controlling as such limitation period was provided in the election contest statute, even though the secretary of the district had issued a certificate of election. *Tiegs v. Patterson*, 79 Idaho 365, 318 P.2d 588 (1957).

Failure to File Bond.

When proper bond is not filed and approved, contest is properly dismissed. *Horne v. Beaton*, 46 Idaho 541, 269 P. 89 (1928).

Cited in: *Johnson v. Boundary Sch. Dist.* # 101, 138 Idaho 331, 63 P.3d 457 (2003).

34-2009. Complaint — Specific allegations. — When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, if known, with the precinct, township or ward where they voted or offered to vote, shall be set forth in the complaint. [1890-1891, p. 57, § 150; reen. 1899, p. 33, § 137; reen. R.C. & C.L., § 5034; C.S., § 7282; I.C.A., § 33-1709.]

34-2010. Issuance of summons. — Upon the filing of such complaint summons shall issue against the person whose office is contested, as prescribed in the Idaho Rules of Civil Procedure. [1890-1891, p. 57, § 151; reen. 1899, p. 33, § 138; reen. R.C. & C.L., § 5035; C.S., § 7283; I.C.A., § 33-1710; am. 1982, ch. 209, § 3, p. 571.]

STATUTORY NOTES

Cross References. — Service of summons, I.R.C.P. 4.

34-2011. Time for trial. — The cause shall stand for trial at the expiration of thirty (30) days from the time of service of the summons and complaint, if the court shall then be in session; otherwise, on the first day of the next term thereafter. [1890-1891, p. 57, § 152; reen. 1899, p. 33, § 139; reen. R.C. & C.L., § 5036; C.S., § 7284; I.C.A., § 33-1711.]

34-2012. Postponement of trial. — The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court. [1890-1891, p. 57, § 153; reen. 1899, p. 33, § 140; reen. R.C. & C.L., § 5037; C.S., § 7285; I.C.A., § 33-1712.]

34-2013. Procedure in general. — The proceedings shall be held according to the Idaho Rules of Civil Procedure so far as practicable, but shall be under the control and direction of the court, which shall have all the powers necessary to the right hearing and determination of the matter; to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate; to adjourn from day to day; to make any order concerning immediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case. [1890-1891, p. 57, § 154; reen. 1899, p. 33, § 141; reen. R.C. & C.L., § 5038; C.S., § 7286; I.C.A., § 33-1713; am. 1982, ch. 209, § 4, p. 571.]

STATUTORY NOTES

Cross References. — Contempt, § 7-601 et seq.

JUDICIAL DECISIONS

ANALYSIS

Burden of proof.
Evidence.

Burden of Proof.

General rule of burden of proof applies to election cases. Contestant must prove that result of election would have been different if illegal votes had not been received. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

General rule is that contestant has burden of proving for whom illegal votes were cast in order to show his own election. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

Evidence.

In proceeding filed by taxpayer contesting election wherein he alleged in complaint that

29 of 34 persons voting illegally had voted "Yes," and 18 of the voters called stated they had voted "Yes," defendant was entitled to introduce evidence that those voters not called as witnesses voted "No," even though answer of defendants alleged that none of the voters specified in complaint voted illegally. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

34-2014. Testimony — Subpoena for witnesses. — The testimony may be oral, or by depositions taken pursuant to the Idaho Rules of Civil Procedure. Subpoenas for witnesses may be issued pursuant to the Idaho Rules of Civil Procedure. [1890-1891, p. 57, § 155; reen. 1899, p. 33, § 142; reen. R.C. & C.L., § 5039; C.S., § 7287; I.C.A., § 33-1714; am. 1982, ch. 209, § 5, p. 571.]

STATUTORY NOTES

Cross References. — Depositions,
I.R.C.P. 27.
Subpoena for witnesses, I.R.C.P. 45(a).

34-2015. Amendments. — The proceedings shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. If any part of the causes are held insufficient they may be amended, but the incumbent will be entitled to an adjournment if he state [states] on oath that he has a matter to answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court deems reasonable; but if all the causes are held insufficient, and an amendment is asked the adjournment shall be at the cost of the contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed. [1890-1891, p. 57, § 156; reen. 1899, p. 33, § 143; reen. R.C. & C.L., § 5040; C.S., § 7288; I.C.A., § 33-1715.]

34-2016. Form and service of process. — The style, form and manner of service of process and papers, and the fees of officers and witnesses shall be the same as in other cases in the court where the cause is tried. [1890-1891, p. 57, § 157; reen. 1899, p. 33, § 144; reen. R.C. & C.L., § 5041; C.S., § 7289; I.C.A., § 33-1716.]

STATUTORY NOTES

Cross References. — Fees of officers, Service of papers other than summons,
§ 31-3201 et seq. I.R.C.P. 5.

34-2017. Voters to testify as to qualifications. — (a) The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter; and if he was not a qualified voter in the county where he voted, then to answer for whom he voted; and if the witness answer [answers] such questions no part of his testimony on that trial shall be used against him in any criminal action.

(b) No testimony shall be received as to any illegal votes unless the party contesting the election delivers to the opposing party at least three (3) days before trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial. No testimony shall be received as to any illegal votes, except as to such as are specified in this list. [1890-1891, p. 57, § 158; reen. 1899, p. 33, § 145; reen. R.C. & C.L., § 5042; C.S., § 7290; I.C.A., § 33-1717; am. 1982, ch. 209, § 6, p. 571.]

STATUTORY NOTES

Cross References. — Disqualifications of
voters, § 34-403.
Qualifications of voters, § 34-402.

JUDICIAL DECISIONS

Evidence.

In proceeding filed by taxpayer contesting election wherein he alleged in complaint that 29 of 34 persons voting illegally had voted "Yes," and 18 of the voters called stated they had voted "Yes," defendant was entitled to

introduce evidence that those voters not called as witnesses voted "No," even though answer of defendants alleged that none of the voters specified in complaint voted illegally. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

34-2018. Inspection of ballots and poll books. — If an inspection of the ballots or poll books of any election district in this state shall become necessary for the determination of any election contest before any court, the presiding judge thereof may, by order naming the district or districts, require the proper officer to procure the same from the county auditor, or other person in whose possession or custody the same may be, and such clerk or person shall deliver the same to said officer, who shall deliver them unopened to such presiding judge. [1890-1891, p. 57, § 159; reen. 1899, p. 33, § 146; reen. R.C. & C.L., § 5043; C.S., § 7291; I.C.A., § 33-1718.]

JUDICIAL DECISIONS

ANALYSIS

Ballots as best evidence.
Introduction in evidence.

Ballots as Best Evidence.

Ballots cast in election are the best evidence of how electors voted, if it is shown that such ballots are brought into court in exactly the same condition they were in when they were cast by voters and counted at election. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

Introduction in Evidence.

Party introducing ballots in evidence must show substantial compliance with statutes relating to care of ballots in question. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

34-2019. Ballots and poll books — Return to county auditor. — The presiding officer shall open and inspect the same in open court, in the presence of the parties or their attorneys, and immediately after such inspection shall again seal them in an envelope and return them, by mail or otherwise, to the office of the county auditor in which they were at first required to be filed. [1890-1891, p. 57, § 160; reen. 1899, p. 33, § 147; reen. R.C. & C.L., § 5044; C.S., § 7292; I.C.A., § 33-1719.]

34-2020. Liability for costs. — (a) The contestant and the incumbent are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed, or the complaint be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs, and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

(b) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the returns, the contest costs shall be a charge against the county or political subdivision where the election was held. [1890-1891, p. 57, § 161; reen. 1899, p. 33, § 148; reen. R.C. & C.L., § 5045; C.S., § 7293; I.C.A., § 33-1720; am. 1982, ch. 209, § 7, p. 571.]

STATUTORY NOTES

Cross References. — Security for costs of contesting election of legislative or state executive office, § 34-2120.

JUDICIAL DECISIONS

Displacement in Tort Claim Actions.

This section and § 6-610 have been displaced in tort claim actions by the clear language of § 6-918A; both of them antedate § 6-918A and neither of them has ever con-

tained express and specific language establishing an exception to the exclusive scope of § 6-918A. *Kent v. Pence*, 116 Idaho 22, 773 P.2d 290 (Ct. App. 1989).

34-2021. Form of judgment. — The judgment of the court in cases of contested election shall confirm or annul the election according to the right of the matter; or, in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected or, in the alternative, order the office to be filled according to chapter 9, title 59, Idaho Code, or order a new election to be held at a time and place as determined by the court. [1890-1891, p. 57, § 162; reen. 1899, p. 33, § 149; reen. R.C. & C.L., § 5046; C.S., § 7294; I.C.A., § 33-1721; am. 1982, ch. 209, § 8, p. 571.]

JUDICIAL DECISIONS

Order for New Election Upheld.

Because the district court “exercised reason” when it found that election results were close and that certain qualified voters had

been turned away, it was reasonable for the court to order a new election. *Nelson v. Big Lost River Irrigation Dist.*, 133 Idaho 139, 983 P.2d 212 (1999).

34-2022. Determination of tie vote. — If it appears that two (2) or more persons have — or would have had if the legal ballots cast or intended to be cast for them had been counted — the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in such manner as the court shall by written order direct, which of them shall be declared duly elected, and the judgment shall be entered accordingly. [1890-1891, p. 57, § 163; reen. 1899, p. 33, § 150; reen. R.C. & C.L., § 5047; C.S., § 7295; I.C.A., § 33-1722.]

34-2023. Order for possession. — When either the contestant or incumbent shall be in possession of the office by holding over, or otherwise, the court shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the court, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs. [1890-1891, p. 57, § 164; reen. 1899, p. 33, § 151; reen. R.C. & C.L., § 5048; C.S., § 7296; I.C.A., § 33-1723.]

STATUTORY NOTES

Cross References. — Duties of sheriff Execution of judgments generally, § 11-301
generally, § 31-2201 et seq. et seq.

34-2024. Election declared void. — When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void. [1890-1891, p. 57, § 165; reen. 1899, p. 33, § 152; reen. R.C. & C.L., § 5049; C.S., § 7297; I.C.A., § 33-1724.]

34-2025. Appeal and supersedeas. — (a) The party against whom judgment is rendered in cases tried in the district court may appeal to the Supreme Court, and if the appellant be in possession of the office, such appeal shall not supersede the execution of the judgment of the court, as provided in the preceding section, unless he give a bond with security, to be approved by the court, in a sum to be fixed by the court, and which shall be at least double the probable compensation of such officer for six (6) months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered, and such bond shall contain the express consent that judgment may be rendered against the sureties on the appeal as provided in the following section.

(b) All appeals to the Supreme Court shall be brought within ten (10) days of the judgment by the district court. [1890-1891, p. 57, § 166; reen. 1899, p. 33, § 153; reen. R.C. & C.L., § 5050; C.S., § 7298; I.C.A., § 33-1725; am. 1982, ch. 209, § 9, p. 571.]

STATUTORY NOTES

Cross References. — Appeals generally,
§ 13-201 et seq.

JUDICIAL DECISIONS

Bond.

There is no law providing that contestant adjudged to be entitled to office shall furnish a bond that he will pay compensation received by him pending appeal if judgment should be adverse. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).

Where appellant files no bond, no warrant can be legally drawn for any part of salary

until proceedings are finally determined. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).

This section modifies § 59-504 to extent that in case officer furnishes supersedeas bond on appeal, salary may be paid to him pending determination. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).

34-2026. Judgment of affirmance. — If upon the appeal the judgment be affirmed, the appellate court shall render judgment against the appellant and the sureties on his bond, or either of them, for the amount which the appellee is entitled to recover from the appellant on account of such contest,

together with the costs; but in such case the sureties, or either of them, shall be entitled to produce and examine witnesses concerning the amount of such recovery. [1890-1891, p. 57, § 167; reen. 1899, p. 33, § 154; reen. R.C. & C.L., § 5051; C.S., § 7299; I.C.A., § 33-1726.]

34-2027. Cost of bond on appeal. — If upon appeal the appellant shall not be in possession of the office, he shall give bond, with security to be approved by the court where the judgment is rendered, conditioned to pay all costs that may be adjudged against him upon such appeal. [1890-1891, p. 57, § 168; reen. 1899, p. 33, § 155; reen. R.C. & C.L., § 5052; C.S., § 7300; I.C.A., § 33-1727.]

34-2028. Contest of nomination at primaries. — A candidate at a primary election may contest the nomination of any candidate for the same office based upon the grounds as set out in this chapter. [I.C., § 34-2028, as added by 1982, ch. 209, § 10, p. 571.]

STATUTORY NOTES

Cross References. — Contest of primary nomination for legislative or state executive office, § 34-2122.

34-2029. Jurisdiction over primary contest. — The district court in the respective county in which the alleged error or omission occurred shall be the court in which jurisdiction shall rest. [I.C., § 34-2029, as added by 1982, ch. 209, § 11, p. 571.]

STATUTORY NOTES

Cross References. — Jurisdiction over primary contests of legislative or state executive office, § 34-2123.

34-2030. Filing of affidavit. — A candidate wishing to contest a primary election shall file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit shall set forth information as required in section 34-2008, Idaho Code. The affidavit shall be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho Rules of Civil Procedure. [I.C., § 34-2030, as added by 1982, ch. 209, § 12, p. 571.]

STATUTORY NOTES

Cross References. — Filing of affidavit, legislative or state executive office, § 34-2124.

34-2031. Security for costs. — Upon filing of the affidavit the contestant shall file with the court a bond, in the amount of five hundred dollars (\$500), to be used to pay costs of the contestee in the event the primary

election be confirmed or the prosecution fail. [I.C., § 34-2031, as added by 1982, ch. 209, § 13, p. 571.]

STATUTORY NOTES

Cross References. — Security for costs, contests of legislative and state executive offices, § 34-2125.

34-2032. Fraud or error by the election official. — If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the election returns, the contest costs shall be a charge against the county or city where the election was held. [I.C., § 34-2032, as added by 1982, ch. 209, § 14, p. 571.]

STATUTORY NOTES

Cross References. — Fraud or error by election official, legislative or state executive office, § 34-2126.

34-2033. Discovery. — The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho Rules of Civil Procedure. The election contest shall be given priority on the court's calendar. [I.C., § 34-2033, as added by 1982, ch. 209, § 15, p. 571.]

STATUTORY NOTES

Cross References. — Discovery in primary contests of legislative and state executive offices, § 34-2127.

34-2034. Remedies. — The court shall render an opinion in a primary contest as soon as is reasonably possible and shall prescribe such remedies as provided in this chapter as it deems just. [I.C., § 34-2034, as added by 1982, ch. 209, § 16, p. 571.]

STATUTORY NOTES

Cross References. — Remedies in primary contest of legislative or state executive office, § 34-2128.

34-2035. Appeals. — (a) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the Supreme Court. The appeal shall be taken within ten (10) days of the judgment by the district court.

(b) The Supreme Court shall give the primary contest appeal priority on its calendar. [I.C., § 34-2035, as added by 1982, ch. 209, § 17, p. 571.]

STATUTORY NOTES

Cross References. — Appeals, contests of legislative or state executive office, § 34-2129.

34-2036. Cost on appeal. — The appellant shall file a bond sufficient to cover the cost of appeal of a primary contest. Costs shall be awarded to the prevailing party on appeal. The amount of the bond on appeal shall be set by the court. [I.C., § 34-2036, as added by 1982, ch. 209, § 18, p. 571.]

STATUTORY NOTES

Cross References. — Costs on appeal, contests of legislative and state executive offices, § 34-2130.

Effective Dates. — Section 39 of S.L. 1982, ch. 209 declared an emergency. Approved March 29, 1982.

CHAPTER 21

ELECTION CONTESTS — LEGISLATIVE AND STATE EXECUTIVE OFFICES

SECTION.

- 34-2101. Grounds of contest.
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When sufficient to vitiate election.
- 34-2104. Jurisdiction — Contests over executive offices.
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SECTION.

- 34-2114. Examination of poll books and ballots.
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- 34-2116. Contest papers delivered to presiding officers.
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- 34-2120. Security for costs — Assessment of costs.
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- 34-2122. Contest of nomination at primaries.
- 34-2123. Jurisdiction over primary contests.
- 34-2124. Filing of affidavit.
- 34-2125. Security for costs.
- 34-2126. Fraud or error by the election official.
- 34-2127. Discovery.
- 34-2128. Remedies.
- 34-2129. Appeals.
- 34-2130. Cost on appeal.

34-2101. Grounds of contest. — The election of any person to any legislative or state executive office may be contested:

1. For malconduct, fraud or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or by any member of either board sufficient to change the result;

2. When the incumbent was not eligible to the office at the time of the election;

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights;

4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money or property,

for the purpose of procuring his election, or has committed any violation as set out in chapter 23, title 18, Idaho Code;

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;

7. When the incumbent is in default as a collector and custodian of public money or property;

8. For any cause which shows that another person was legally elected. [R.S., § 5026; am. 1890-1891, p. 57, § 132; reen. 1899, p. 33, § 119; am. R.C., § 39; reen. 1909, p. 333; reen. C.L., § 39; C.S., § 80; I.C.A., § 33-1801; am. 1982, ch. 209, § 19, p. 571.]

STATUTORY NOTES

Cross References. — Election contests in general, § 34-2001 et seq.

Usurpation of office, action for, § 6-602.

JUDICIAL DECISIONS

Eligibility.

Ineligibility of a candidate for office at the time of election because of holding another office, the term of which will expire before the beginning of the term of the office for which he

is a candidate, is not ground for contest of such candidate's election under subsection 2 of this section. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

34-2102. Incumbent defined. — The term "incumbent" as used in the preceding section means the person whom the canvassers declare elected. [1890-1891, p. 57, § 133; reen. 1899, p. 33, § 120; reen. R.C., § 40; reen. C.L., § 40; C.S., § 81; I.C.A., § 33-1802.]

34-2103. Misconduct of election judges — When sufficient to vitiate election. — When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election unless the vote of the precinct, township or ward would change the result as to that office. [1890-1891, p. 57, § 134; reen. 1899, p. 33, § 121; reen. R.C., § 41; reen. C.L., § 41; C.S., § 82; I.C.A., § 33-1803.]

34-2104. Jurisdiction — Contests over executive offices. — The legislature, in joint meeting, shall hear and determine cases of contested election for all officers of the executive department. The meeting of the two (2) houses to decide upon such elections shall be held in the house of representatives and the speaker of the house shall preside. [1890-1891, p. 57, § 135; reen. 1899, p. 33, § 122; am. R.C., § 42; reen. C.L., § 42; C.S., § 83; I.C.A., § 33-1804.]

34-2105. Jurisdiction — Contests over legislative offices. — The senate and house of representatives shall severally hear and determine contests of the election of their respective members. [1890-1891, p. 57, § 136; reen. 1899, p. 33, § 123; reen. R.C., § 43; reen. C.L., § 43; C.S., § 84; I.C.A., § 33-1805.]

STATUTORY NOTES

Cross References. — Each house is judge of the election, qualifications, and returns of its members, Const., Art. III, § 9.

JUDICIAL DECISIONS

Construction.

Each house of the legislature is sole judge of the election and qualification of its members.

Burge v. Tibor, 88 Idaho 149, 397 P.2d 235 (1964).

34-2106. Notice of contest. — Whenever any elector of this state chooses to contest the validity of the election of any of the officers of the executive department of the state, or whenever any elector of the proper county or district chooses to contest the election of any member of the legislature from such county or district, such person shall give notice thereof, in writing, and leave a copy thereof with the person whose election he intends to contest, within twenty (20) days after the election (if the person can not be found in his district, then a copy to be left at his last place of residence in the district), naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions. [1890-1891, p. 57, § 140; reen. 1899, p. 33, § 127; reen. R.C. & C.L., § 44; C.S., § 85; I.C.A., § 33-1806.]

STATUTORY NOTES

Compiler's Notes. — The words in parentheses so appeared in the law as enacted.

34-2107. Examination of witnesses. — Any party may take the testimony of any person by deposition upon oral examination pursuant to the provisions of the Idaho Rules of Civil Procedure. All such testimony shall be completed on or before December 29 following the election. [I.C., § 34-2107, as added by 1982, ch. 209, § 21, p. 571.]

STATUTORY NOTES

Prior Laws. — Former § 34-2107, which comprised 1890-1891, p. 57, § 141; reen. 1899, p. 33, § 128; reen. R.C. & C.L., § 45; C.S., § 86; I.C.A., § 33-1807, was repealed by S.L. 1982, ch. 209, § 20, effective March 29, 1982.

34-2108. Subpoenas — Application for. — When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena pursuant to the Idaho Rules of Civil Procedure. [1881, p. 257, § 13; am. R.S., § 131; am. R.C. & C.L., § 46; C.S., § 87; I.C.A., § 33-1808; am. 1969, ch. 115, § 3, p. 373; am. 1982, ch. 209, § 22, p. 571.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1969, ch. 115 provided that the 1969 amendment which struck out references to probate judge and justices of the peace would not become effective until 12:01 a.m. on January 11, 1971.

34-2109. Subpoenas — How issued. — The subpoena obtained pursuant to section 34-2108, Idaho Code, shall be issued according to the provisions of the Idaho Rules of Civil Procedure. [1881, p. 257, § 14; am. R.S., § 132; reen. R.C. & C.L., § 47; C.S., § 88; I.C.A., § 33-1809; am. 1982, ch. 209, § 23, p. 571.]

34-2110. Disobedience of subpoena — Penalty. — Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, forfeits the sum of twenty dollars (\$20.00), to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use, and is guilty of a misdemeanor. [1881, p. 257, § 16; am. R.S., § 134; reen. R.C. & C.L., § 48; C.S., § 89; I.C.A., § 33-1810.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

34-2111. Production of papers — Refusal or neglect to produce a misdemeanor. — The officers have power to require the production of papers to the extent allowed under the Idaho Rules of Civil Procedure; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they be official papers, such person is guilty of a misdemeanor. [1881, p. 257, § 19; am. R.S., § 137; reen. R.C. & C.L., § 49; C.S., § 90; I.C.A., § 33-1811; am. 1982, ch. 209, § 24, p. 571.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

34-2112. Witnesses' fees and mileage. — Every witness attending by virtue of any subpoena herein directed to be issued is entitled to receive the witness fees as allowed under the Idaho Rules of Civil Procedure. [1881, p. 257, § 20; am. R.S., § 138; reen. R.C. & C.L., § 50; C.S., § 91; I.C.A., § 33-1812; am. 1982, ch. 209, § 25, p. 571.]

34-2113. Testimony — How taken, certified and preserved. — The testimony by deposition upon oral examination shall be taken and preserved pursuant to the provisions of the Idaho Rules of Civil Procedure. The

deposition record shall be entitled "Deposition taken in the matter of the contest of the election of A.B. to the office of . . .," and directed to the secretary of state, who shall preserve the same, unopened, till the meeting of the legislature. [1890-1891, p. 57, § 142; reen. 1899, p. 33, § 129; am. R.C. & C.L., § 51; C.S., § 92; I.C.A., § 33-1813; am. 1982, ch. 209, § 26, p. 571.]

34-2114. Examination of poll books and ballots. — If, at the time of taking depositions to be used before the legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the ballots or the poll books of any election district or districts should be inspected, the officer or officers before whom such depositions shall be taken shall, on the request of either party to the contest, issue an order requiring the county auditor, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions, as provided in the preceding section. [1890-1891, p. 57, § 143; reen. 1899, p. 33, § 130; reen. R.C. & C.L., § 52; C.S., § 93; I.C.A., § 33-1814.]

34-2115. Fees of officers. — Officers performing services in a contested election case, may charge and collect from the party at whose instance such services were performed, the same fees as are allowed for similar services in civil cases. [1881, p. 257, § 21; am. R.S., § 139; reen. R.C. & C.L., § 53; C.S., § 94; I.C.A., § 33-1815.]

STATUTORY NOTES

Cross References. — Fees of officers,
§ 31-3201 et seq.

34-2116. Contest papers delivered to presiding officers. — On the second day of the regular session of the legislature, the secretary of state shall deliver to the speaker of the house all papers relating to the contested elections of executive officers, and to the presiding officers of each house, all papers relating to contested elections of the members of their respective houses. [1890-1891, p. 57, § 144; reen. 1899, p. 33, § 131; reen. R.C. & C.L., § 54; C.S., § 95; I.C.A., § 33-1816; am. 1982, ch. 209, § 27, p. 571.]

34-2117. Notice of receiving papers. — Upon the reception by such presiding officers of papers relating to contested elections, they shall immediately give notice to their respective houses that such papers are in their possession. Where the papers relate to the contest of a state executive officer, the house of representatives shall notify the senate, and the day shall be fixed by both houses, by concurrent resolution, for the uniting of the two (2) houses to decide upon the same, in which decision the yeas and nays

shall be taken and entered upon the journal. [1890-1891, p. 57, § 145; reen. 1899, p. 33, § 132; am. R.C. & C.L., § 55; C.S., § 96; I.C.A., § 33-1817.]

34-2118. Opening and custody of papers. — The papers relating to any such contest shall be opened only in the presence of the body by the presiding officer, to whom the same shall be delivered. If ballots or poll books are contained therein, they shall, after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope, and returned by mail or otherwise to the office of the county auditor in which they were first required to be filed. [1890-1891, p. 57, § 146; reen. 1899, p. 33, § 133; reen. R.C. & C.L., § 56; C.S., § 97; I.C.A., § 33-1818.]

34-2119. Preservation of evidence. — All the evidence in any contest provided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be preserved in the office of the secretary of state. [1890-1891, p. 57, § 147; reen. 1899, p. 33, § 134; reen. R.C. & C.L., § 57; C.S., § 98; I.C.A., § 33-1819.]

34-2120. Security for costs — Assessment of costs. — (a) The contestant shall file with the secretary of state a bond in the amount of five hundred dollars (\$500) conditioned to pay the contestee's costs in case the election be confirmed by the legislature.

(b) The contestants are liable for witness fees and the costs of discovery made by them respectively. If the election is upheld by the legislature, the legislature may assess costs against the contestant. If the election is annulled by the legislature, the legislature may assess costs against the contestee.

(c) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the returns, the contest costs shall be a charge against the county in which the fraud or error occurred.

(d) If a special election is called by the legislature pursuant to section 34-2121, Idaho Code, the costs associated with the special election shall be allocated in equal amounts to the state of Idaho and the county or counties where the special election is held. [I.C., § 34-2120, as added by 1982, ch. 209, § 28, p. 571.]

STATUTORY NOTES

Cross References. — Liability for costs of contesting election for other office, § 34-2020.

34-2121. Form of relief. — (a) The legislature shall confirm or annul the election and shall declare as elected the person who shall appear duly elected.

(b) If two (2) or more persons have, or would have had if the legal ballots cast or intended to be cast for them had been counted, the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in a manner as the legislature shall direct, which of them shall be declared duly elected.

(c) When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the legislature shall declare the election void. If a vacancy is created pursuant to this section, the legislature may declare the office vacant and order the office filled pursuant to chapter 9, title 59, Idaho Code, or, in the alternative the legislature shall have the authority to call for a special reelection regarding a specific contested office in which an accurate vote count cannot be obtained or discovered by the legislature. The legislature shall have the authority to set the time of the election and the office and candidates to be placed on the ballot. [I.C., § 34-2121, as added by 1982, ch. 209, § 29, p. 571.]

34-2122. Contest of nomination at primaries. — Any candidate at a primary election may contest the nomination of any candidate for the same office based upon the grounds as set out in this chapter. [I.C., § 34-2122, as added by 1982, ch. 209, § 30, p. 571.]

STATUTORY NOTES

Cross References. — Contest of primary nomination for other office, § 34-2028.

34-2123. Jurisdiction over primary contests. — A district court in the respective legislative district shall have jurisdiction over the primary contest involving a legislative election. For election contests involving statewide executive offices, the district court whose jurisdiction includes the state capitol shall have jurisdiction. [I.C., § 34-2123, as added by 1982, ch. 209, § 31, p. 571.]

STATUTORY NOTES

Cross References. — Jurisdiction over primary contest of other office, § 34-2029.

34-2124. Filing of affidavit. — A candidate wishing to contest a primary election shall file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit shall set forth information as required in section 34-2106, Idaho Code. The affidavit shall be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho Rules of Civil Procedure. [I.C., § 34-2124, as added by 1982, ch. 209, § 32, p. 571.]

STATUTORY NOTES

Cross References. — Filing of affidavit, other offices, § 34-2030.

34-2125. Security for costs. — Upon filing of the affidavit the contestant shall file with the court a bond, in the amount of five hundred dollars (\$500), to be used to pay costs of the contestee in the event the primary election be confirmed or the prosecution fail. [I.C., § 34-2125, as added by 1982, ch. 209, § 33, p. 571.]

STATUTORY NOTES

Cross References. — Security for costs, contests of other offices, § 34-2031.

34-2126. Fraud or error by the election official. — If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the election returns, the court costs shall be a charge against the state of Idaho. [I.C., § 34-2126, as added by 1982, ch. 209, § 34, p. 571.]

STATUTORY NOTES

Cross References. — Fraud or error by election official, other offices, § 34-2032.

34-2127. Discovery. — The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho Rules of Civil Procedure. The election contest shall be given priority on the court's calendar. [I.C., § 34-2127, as added by 1982, ch. 209, § 35, p. 571.]

STATUTORY NOTES

Cross References. — Discovery in primary contests of other offices, § 34-2033.

34-2128. Remedies. — Not more than ten (10) days after the hearing, the court shall render an opinion in a primary contest as soon as is reasonably possible and shall prescribe such remedies as provided in this chapter as it deems just. [I.C., § 34-2128, as added by 1982, ch. 209, § 36, p. 571.]

STATUTORY NOTES

Cross References. — Remedies in primary contest of other offices, § 34-2034.

34-2129. Appeals. — (a) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the Supreme Court. The appeal shall be taken within ten

(10) days of the judgment of the district court.

(b) The Supreme Court shall give the primary contest appeal priority and in no case shall it render a decision more than ten (10) days after the receipt of an appeal. [I.C., § 34-2129, as added by 1982, ch. 209, § 37, p. 571.]

STATUTORY NOTES

Cross References. — Appeals, contests of other offices, § 34-2035.

34-2130. Cost on appeal. — The appellant shall file a bond sufficient to cover the cost of appeal of a primary contest. The amount of the bond on appeal shall be set by the court. [I.C., § 34-2130, as added by 1982, ch. 209, § 38, p. 571.]

STATUTORY NOTES

Cross References. — Costs on appeal, 1982, ch. 209 declared an emergency. Approved March 29, 1982. contests of other offices, § 34-2036.

Effective Dates. — Section 39 of S.L.

CHAPTER 22

CONSTITUTIONAL CONVENTION ACT

SECTION.

- 34-2201. Election of delegates.
- 34-2202. Qualifications of voters.
- 34-2203. Ascertainment and certification of results — General election laws applicable.
- 34-2204. Number of delegates.
- 34-2205. Qualifications of delegates — Nominating petitions — Declarations of candidates and signers — Certification.
- 34-2206. Ballots.
- 34-2207. Result of election — Vacancies, how filled.

SECTION.

- 34-2208. Meeting and organization of delegates.
- 34-2209. Organizational powers of convention.
- 34-2210. Journal of proceedings.
- 34-2211. Certificate of ratification.
- 34-2212. No compensation — Expenses, how allowed.
- 34-2213. Expenses, how paid.
- 34-2214. Federal statute to control.
- 34-2215. Separability.
- 34-2216. Short title.
- 34-2217. [Repealed.]

34-2201. Election of delegates. — Whenever the Congress of the United States has proposed, or shall hereafter propose, an amendment to the Constitution of the United States, and proposes that it be ratified by conventions in the several states, the governor shall fix by proclamation the date of an election, subject to the provisions of section 34-106, Idaho Code, for the purpose of electing delegates to such convention in the state of Idaho. The proclamation for such election shall be issued by the governor under his hand and the great seal of the state of Idaho at least ninety (90) days before such election and copies thereof shall be transmitted to the board of county commissioners of the counties in which such elections are to be held. Such election shall be held at least as soon as the next general election occurring more than three (3) months after the amendment has been proposed by the Congress of the United States. [1933, ch. 179, § 1, p. 328; am. 1995, ch. 118, § 47, p. 715.]

STATUTORY NOTES

Cross References. — General elections, time of holding, § 34-601.

34-2202. Qualifications of voters. — At such election all persons qualified to vote for presidential electors shall be entitled to vote. [1933, ch. 179, § 2, p. 328.]

STATUTORY NOTES

Cross References. — Qualifications of voters, § 34-401 et seq.

34-2203. Ascertainment and certification of results — General election laws applicable. — Except as in this act otherwise provided, such election shall be conducted and the results thereof ascertained and certified in the same manner as in the case of the election of presidential electors in this state, and all the provisions of the laws of this state relative to general elections, except in so far as inconsistent with sections 34-2201 — 34-2216, are hereby made applicable to such election. [1933, ch. 179, § 3, p. 328.]

STATUTORY NOTES

Cross References. — Canvassing of returns, § 34-1201.

Conduct of elections, § 34-1101 et seq.

Compiler's Notes. — The words "this act",

used in this section, refer to S.L. 1933, Chapter 179, which is codified as §§ 34-2201 to 34-2216.

34-2204. Number of delegates. — The number of delegates to be chosen to such convention shall be twenty-one (21), to be elected from the state at large. [1933, ch. 179, § 4, p. 328.]

34-2205. Qualifications of delegates — Nominating petitions — Declarations of candidates and signers — Certification. — Candidates for the office of delegate to the convention shall be qualified electors of the state of Idaho. Nomination shall be by petition and not otherwise. A single petition shall nominate but one (1) candidate, who may have one (1) or more separate petitions. Nominations shall be without party or political designation, but the nominating petitions shall each contain a declaration of the candidate that he is a candidate for election to the office of delegate to the constitutional convention, and a statement to the effect that he favors ratification of, or that he is against ratification of the proposed constitutional amendment to be acted upon by the constitutional convention, and the total number of voters joining in the nomination of a candidate shall not be less than one hundred (100).

The candidate's declaration in the nominating petition shall be in substantially the following form, to-wit:

I, the undersigned, being a qualified elector of precinct, County, State of Idaho, hereby declare myself to be a candidate for the office of

delegate to the constitutional convention, to be voted for at the election to be held on the day of,, and that I (insert one only of the following: "favor ratification of" or "am against ratification of") the proposed constitutional amendment to be acted upon by the constitutional convention, and certify that I possess the legal qualifications to fill said office, and that my post-office address is

I further certify and declare that if nominated I hereby accept said office.
(Signed)

All blank spaces shall be properly filled in with the necessary information and the declaration of candidacy shall be subscribed and sworn to before an officer authorized to administer oaths, and the signatures of the voters joining in such petitions, each of which signature shall be followed by the signer's residence address and date, shall be prefaced by a declaration in substantially the following form, to-wit:

I, the undersigned, being a qualified elector of the State of Idaho, do hereby declare that I am in accord with the statement and declaration of, a candidate for the office of delegate to the constitutional convention, to be voted for at the election to be held on the day of,, and do hereby join in this petition for his nomination for such office.

| Name of Petitioner | Post office | Date of Signing |
|--------------------|-------------|-----------------|
| | | |

Each nominating petition shall, at the time of filing in the office of the secretary of state, bear an affidavit in substantially the following form, executed and verified by a citizen and resident of the State of Idaho:

State of Idaho
ss.
County of

I do solemnly swear (or affirm) that I am a citizen and resident of the State of Idaho; that each of the petitioners whose name is affixed to the above paper signed the same personally, together with his post-office address and date of signing, and that each signed the same with full knowledge of its contents; that to the best of my knowledge each is a qualified elector of the State of Idaho.

(Signed)

Subscribed and sworn to before me this day of,
.....
Notary Public for the State of
Idaho; residence

No voter shall sign more than twenty-one (21) nominating petitions nor more than one (1) petition for the same candidate, and if he does either, his signatures shall not be counted on any nominating petition.
All acceptances and petitions shall be filed with the secretary of state not less than forty-five (45) days before the date fixed for the election. No

nomination shall be effective except those of the twenty-one (21) candidates in favor of ratification and the twenty-one (21) candidates against ratification whose nominating petitions have respectively been signed by the largest number of voters, ties, if any, to be decided by lot drawn by the secretary of state; provided, however, that if there be less than twenty-one (21) candidates in favor of ratification, all such candidates shall be considered as nominated, or if there be less than twenty-one (21) candidates against ratification all such candidates shall be considered as nominated.

Within ten (10) days after the petitions are filed with him, the secretary of state shall certify to each county auditor within the state, a certified list of the candidates of each group entitled to be voted for at such election, as appears from the acceptances and nominating petitions filed in the office of the secretary of state. [1933, ch. 179, § 5, p. 328; am. 2007, ch. 90, § 17, p. 246.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 90, deleted references to the twentieth century in the date lines in the form.

34-2206. Ballots. — The election shall be by ballot, separate from any ballot to be used at the same election, which ballot shall be prepared as follows: It shall first state the substance of the proposed constitutional amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively, in plain type, "For Ratification" and "Against Ratification." In the column headed "For Ratification" shall be placed the names of the candidates nominated in favor of ratification. In the column headed "Against Ratification" shall be placed the names of the candidates nominated as against ratification. The voter shall indicate his choice by making one or more cross-marks in the appropriate spaces provided on the ballot. No ballot shall be held void because any such cross-mark is irregular in character. The ballot shall be so arranged that the voter may, by making a single cross-mark, vote for the entire group of candidates whose names are comprised in any column:

The ballot shall be in substantially the following form:

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Delegates to the Convention to Ratify the
Proposed Amendment.

The Congress has proposed an amendment to the Constitution of the United States which provides (insert here the substance of the proposed amendment).



The Congress has also proposed that the said amendment shall be ratified by conventions in the several states.

INSTRUCTIONS TO VOTERS

Do not vote for more than 21 candidates altogether.

To vote for all candidates in favor of ratification, or for all candidates against ratification, make a cross-mark in the CIRCLE at the head of the list of candidates for whom you wish to vote. If you do this, make no other mark.

To vote for an individual candidate make a cross-mark in the SQUARE at the left of the name.

| FOR RATIFICATION | AGAINST RATIFICATION |
|---|---|
|  |  |
| <input type="checkbox"/> John Doe | <input type="checkbox"/> Charles Coe |
| <input type="checkbox"/> Richard Roe | <input type="checkbox"/> Michael Moe |

All circular spaces in said ballot shall be one-half (1/2) inch in diameter.
All square spaces in said ballot shall be one-half (1/2) inch square.
Except as herein otherwise provided, ballots and supplies for said election shall be prepared and furnished as provided by chapter 9 of this title. [1933, ch. 179, § 6, p. 328.]

34-2207. Result of election — Vacancies, how filled. — The twenty-one (21) candidates who shall receive respectively the highest numbers of the total number of votes cast at said election shall be the delegates to the convention. If there shall be a vacancy in the convention caused by the death or disability of any delegate or any other cause, the same shall be filled by appointment by the majority vote of the delegates comprising the group from which such delegate was elected and if the convention contains no other delegate of that group, shall be filled by the governor. [1933, ch. 179, § 7, p. 328.]

34-2208. Meeting and organization of delegates. — The delegates to the convention shall meet and assemble in the house of representatives in the capitol at Boise, Idaho, on the twenty-eighth day after their election, at twelve (12) o'clock noon, and shall thereupon organize as, be and constitute a convention to pass upon the question of whether or not the proposed amendment shall be ratified. [1933, ch. 179, § 8, p. 328.]

34-2209. Organizational powers of convention. — The convention shall be the judge of the election and qualification of its members; and shall have the power to elect its president, secretary and other officers and/or employees and to adopt its own rules. [1933, ch. 179, § 9, p. 328.]

34-2210. Journal of proceedings. — The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of ratification of the proposed amendment. Upon final adjournment the journal shall be certified to by the president and secretary of the convention and be filed with the secretary of state. [1933, ch. 179, § 10, p. 328.]

34-2211. Certificate of ratification. — If the convention shall agree, by a vote of a majority of the total number of delegates, to the ratification of the proposed amendment, a certificate to that effect shall be executed by the president and secretary of the convention and transmitted to the secretary of state of this state, who shall transmit the certificate under the great seal of the state to the secretary of state of the United States. [1933, ch. 179, § 11, p. 328.]

34-2212. No compensation — Expenses, how allowed. — No delegate to a constitutional convention shall receive any compensation except that such delegate shall be paid his actual, necessary and reasonable expenses in traveling to and from and attendance at said convention. [1933, ch. 179, § 12, p. 328.]

34-2213. Expenses, how paid. — All the expenses of the constitutional convention and the expenses allowed delegates thereto shall be allowed and paid by the state of Idaho in the same manner as other claims against the state are allowed and paid, and from such appropriations as are, or may be, available therefor. [1933, ch. 179, § 13, p. 328.]

34-2214. Federal statute to control. — If at or about the time of submitting any such amendment, Congress shall either in the resolution submitting the same or by statute, prescribe the manner in which the conventions shall be constituted, and shall not except from the provisions of such statute or resolution such states as may theretofore have provided for constituting such conventions, the preceding provisions of this act shall be inoperative, the convention shall be constituted and shall operate as the said resolution or Act of Congress shall direct, and all officers of the state who may by the said resolution or statute be authorized or directed to take any action to constitute such a convention for this state are hereby authorized and directed to act thereunder and in obedience thereto with the same force and effect as if acting under a statute of this state. [1933, ch. 179, § 14, p. 328.]

STATUTORY NOTES

Compiler's Notes. — For meaning of "this act", see Compiler's notes following § 34-2203.

34-2215. Separability. — If any part or parts of sections 34-2201 — 34-2216 shall be adjudged by the courts to be unconstitutional or invalid, the

same shall not effect the validity of any part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid. The legislature hereby declares that it would have passed the remaining parts of sections 34-2201 — 34-2216 if it had been known that such other part or parts thereof would be declared to be unconstitutional or invalid. [1933, ch. 179, § 15, p. 328.]

34-2216. Short title. — This act, sections 34-2201 — 34-2216, may be cited as the “Constitutional Convention Act.” [1933, ch. 179, § 16, p. 328.]

34-2217. Referendum on United States constitutional amendment — Advisory nature. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised 1975, ch. 125, § 1, p. 258; am. 1979, ch. 249, § 1, p. 654, was repealed by S.L. 1995, ch. 227, § 1, effective March 20, 1995.

CHAPTER 23

RECOUNT OF BALLOTS

| | |
|--|---|
| SECTION. | SECTION. |
| 34-2301. Application for recount of ballots. | 34-2306. Difference revealed by recount — |
| 34-2302. Precincts specified for recount — | Candidate relieved of costs. |
| Remittance. | 34-2307. When general recount ordered. |
| 34-2303. Ballots ordered impounded by at- | 34-2308. Candidate disagreeing with recount |
| torney general. | results — Appeal. |
| 34-2304. Order for recount — Procedure — | 34-2309. Automatic recount. |
| Notice. | 34-2310. “Costs” defined. |
| 34-2305. Manner of recounting. | |

34-2301. Application for recount of ballots. — Any candidate for federal, state or county office desiring a recount of the ballots cast in any nominating or general election may apply to the attorney general therefor, within twenty (20) days of the canvass of such election, by the state board of canvassers if for federal and state office, or within twenty (20) days of the canvass of such election by the county commissioners if for a county office. [1957, ch. 198, § 1, p. 410; am. 1985, ch. 41, § 1, p. 84.]

STATUTORY NOTES

Cross References. — State board of canvassers, § 34-1211.

34-2302. Precincts specified for recount — Remittance. — In his application he shall state the precinct or precincts in which he desires recount to be made and shall remit to the attorney general together with his application the sum of \$100.00 for each such precinct in which he desires a recount made. [1957, ch. 198, § 2, p. 410.]

34-2303. Ballots ordered impounded by attorney general. — Upon receiving the application for recount together with the remittance required by the preceding section the attorney general shall cause all ballot boxes used in such election in the precinct or precincts in which recount is to be made to be immediately impounded and taken into custody by the sheriff of the county or counties in which precinct or precincts are located. In the event that the recount is of the results of a primary election the ballot boxes used to hold the blank half of the ballot shall also be impounded. [1957, ch. 198, § 3, p. 410.]

34-2304. Order for recount — Procedure — Notice. — The attorney general shall then issue an order for recount. The order shall name the prior election judges and clerks of the precinct to act in the same capacity and receive the same compensation as they did on election day. The order shall provide for the place where the recount is to be made; that all candidates named on the ballot for the office contested, or a representative of either or all of them, may be present to watch the counting; and that every other person interested may be present. The order shall state the date on which the recount is to be made which shall not be more than ten (10) days from the date of the order. Copies of the order shall be mailed to each candidate named on the ballot for the office to be recounted. [1957, ch. 198, § 4, p. 410; am. 1985, ch. 41, § 2, p. 84.]

34-2305. Manner of recounting. — At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives, and if the recount is of a primary election the blank ballots shall be counted against the ballots that were voted. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated. The recount shall be conducted under the same conditions and in the same manner as the original count. The attorney general shall be the final authority concerning any question which arises during the recount. [1957, ch. 198, § 5, p. 410; am. 1985, ch. 41, § 3, p. 84.]

34-2306. Difference revealed by recount — Candidate relieved of costs. — If the results of the recount indicate a difference which if projected across all the precincts of the office in question would change the result of the election in favor of the candidate requesting the recount, then the cost of such recount shall be borne by the county or state and the sums of money theretofore paid for the recount shall be returned to the candidate.

In order to be relieved of the costs of the recount, the candidate must request that at least twenty (20) precincts containing not less than five thousand (5,000) votes cast be recounted if for a federal or state office, or five (5) precincts containing not less than one thousand two hundred fifty (1,250) votes cast be recounted for a state legislative district office, or two (2) precincts having not less than five hundred (500) votes cast be recounted for a county office. [1957, ch. 198, § 6, p. 410; am. 1985, ch. 41, § 4, p. 84.]

34-2307. When general recount ordered. — If the candidate who requested the recount is relieved of the costs of the recount as described in

section 34-2306, Idaho Code, the attorney general shall require a recount to be made in all the remaining precincts of the office in question. The state shall pay for a general recount of a federal, state, or legislative district office, while the county shall pay for a general recount of a county office. [I.C., § 34-2307, as added by 1985, ch. 41, § 6, p. 84.]

STATUTORY NOTES

Prior Laws. — Former § 34-2307, which comprised 1957, ch. 198, § 7, p. 410, was repealed by S.L. 1985, ch. 41, § 5.

34-2308. Candidate disagreeing with recount results — Appeal.

— (1) Any candidate may appeal the results of a recount or the determination that a recount is not necessary when:

- (a) Any candidate for the office for which recount has been requested disagrees with the results of the recount and alleges that the law has been misinterpreted or misapplied;
- (b) It appears that a different application or interpretation of the law would have required a general recount where no general recount was ordered; or
- (c) It appears that a different application or interpretation of the law would not have required a general recount where a general recount was ordered;

then the candidate claiming the misinterpretation or the misapplication of law may appeal to the district court in the county concerned if the office is a county or municipal office or to the district court in Ada county if the office is a federal or state office.

(2) The submittal on appeal shall be by brief and submitted within twenty-four (24) hours following the recount. The appeal submittal shall be served upon the attorney general of Idaho within twenty-four (24) hours of filing it within the district court. The appeal submittal shall also be served upon the opposing candidate(s) within twenty-four (24) hours of filing the appeal in the district court.

(3) The attorney general, in consultation with the secretary of state, may respond to the submittal by brief.

(4) The opposing candidate(s) may respond to the submittal by brief.

(5) At the discretion of the district judge, a hearing may be ordered within five (5) days of the filing of the appeal. All parties required to be served with the appeal may participate fully in the hearing. The judge may determine that the appeal may be decided on the brief without a hearing.

(6) A decision thereon shall be given within five (5) days. Any appeal from the decision of the district court must be taken within twenty-four (24) hours after a decision is rendered. A decision on the appeal shall be given within five (5) days. No further appeal shall be allowed. [1957, ch. 198, § 8, p. 410; am. 1985, ch. 41, § 7, p. 84; am. 2004, ch. 48, § 1, p. 232.]

JUDICIAL DECISIONS

Cited in: Hansen v. Jones, 107 Idaho 1098, 695 P.2d 1237 (1984).

34-2309. Automatic recount. — A losing candidate for nomination, or election to a federal, state, or county office may request a recount of the votes cast for the nomination or election to that office if the difference between the vote cast for that candidate and for the winning candidate for nomination or election is less than or equal to one-tenth of one percent (0.1%) of the total votes cast for that office. All requests shall be in writing, and filed with the attorney general during the time mentioned in section 34-2301, Idaho Code.

The state shall pay for the automatic recount of a federal, state, or legislative district office, while the county shall pay for the automatic recount of a county office. [I.C., § 34-2309, as added by 1985, ch. 41, § 9, p. 84; am. 1986, ch. 97, § 3, p. 275.]

STATUTORY NOTES

Prior Laws. — Former § 34-2309, which comprised 1957, ch. 198, § 9, p. 410, was repealed by S.L. 1985, ch. 41, § 8.

Effective Dates. — Section 4 of S.L. 1986, ch. 97 declared an emergency. Approved March 22, 1986.

34-2310. "Costs" defined. — As used in this chapter, costs of recount shall include the following:

- (1) Travel costs of the office of the attorney general including meals and lodging.
- (2) Normal hourly rate for election judges and clerks who are not employees of the county.
- (3) Mileage for election judges who are not employees of the county.
- (4) Any other costs directly attributable to the recount. [I.C., § 34-2310, as added by 1985, ch. 41, § 10, p. 84.]

CHAPTER 24

VOTING BY MACHINE OR VOTE TALLY SYSTEM

SECTION.

- 34-2401. Definitions.
- 34-2402. Authority to use.
- 34-2403. Applicability of other laws.
- 34-2404. Tampering with machines prohibited.
- 34-2405. Authority for procurement of machines.
- 34-2406. Joint purchase and use of machines authorized.
- 34-2407. Purchase of machines — Manner of payment.
- 34-2408. Prior approval required for issuance of bonds.
- 34-2409. Examination of machines by secretary of state prior to adoption.

SECTION.

- 34-2410. Specifications for voting machines or vote tally systems.
- 34-2411. Duties of clerks of election boards.
- 34-2412. Composition of precinct election boards.
- 34-2413. Preparation of machines for use — Instructions.
- 34-2414. Printed matter and supplies.
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- 34-2416. Procedure for preparing machines for an election.
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- 34-2418. Ballots and ballot labels.
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SECTION.

- 34-2420. Examinations of face of machine during election.
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- 34-2422. Closing of polls — Delivery of ballots to clerk before polls closed.
- 34-2423. Absent voting by voting machine or paper ballot.
- 34-2424. Paper ballots used in conjunction with voting machines.

SECTION.

- 34-2425. Preparation and distribution of sample ballots.
- 34-2426. Exhibition of voting machines for instruction of voters.
- 34-2427. Physically disabled voters.
- 34-2428. [Repealed.]
- 34-2429. Validation of elections.
- 34-2430 — 34-2446. [Repealed.]

34-2401. Definitions. — As used in this chapter:

(1) "Ballot" means any material used or the voting surface of a direct recording electronic system on which votes are cast for offices, candidates and measures.

(2) "Ballot card" means the tabulating card or cards of any size upon which the voter records his vote.

(3) "Ballot label" means the cards, papers, booklet or other material containing the names of offices and candidates and measures to be voted on.

(4) "Election" means all state, county, city, district and other political subdivision elections including bond issue elections.

(5) "Governing body" means the board of county commissioners of any county or the governing body of any city, district or other political subdivision elections including bond issue elections.

(6) "Measure" means a proposed law, act or part of an act of the legislative assembly or amendment to the constitution of the state of Idaho to be submitted to the people for their approval or rejection at an election. "Measure" also means other propositions which can be submitted to the voters at any election by counties, cities, districts or other political subdivisions.

(7) "Model" means a mechanically operated model of a portion of the face of the machine illustrating the means of voting.

(8) "Precinct" includes all election districts.

(9) "Voting machine" means:

(a) Any mechanical or electronic device which will record every vote cast by any voter on candidates and measures and which will either internally or externally total all votes cast on that device;

(b) Any device into which a ballot card may be inserted and which is so designed and constructed that the vote for any candidate or measure may be indicated by punching or marking the ballot card.

(10) "Vote tally system" means one (1) or more pieces of machinery or equipment necessary to examine and tally automatically paper ballots having marks placed thereon by a written mark or by a marking stamp. The examination shall be accomplished by either mark sensing or optical scanning. [1970, ch. 140, § 132, p. 351; am. 1974, ch. 3, § 1, p. 17; am. 2001, ch. 272, § 3, p. 993; am. 2003, ch. 48, § 14, p. 181.]

STATUTORY NOTES

Cross References. — Definitions for entire election law, § 34-101 et seq.

Penalties for violation of election laws, § 18-2301 et seq.

Prior Laws. — Former § 34-2401, which comprised 1963, ch. 177, § 1, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

Effective Dates. — Section 218 of S.L. 1970, ch. 140 declared an emergency and provided that §§ 132—161 of the act should take effect on March 10, 1970.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

34-2402. Authority to use. — It is the policy of this state that at all elections, including bond issue elections, that ballots or votes may be cast, registered, recorded and counted by means of voting machines or vote tally systems as provided in this chapter. [I.C., § 34-2402, as added by 1974, ch. 3, § 3, p. 17.]

STATUTORY NOTES

Prior Laws. — Former § 34-2402, which comprised 1963, ch. 177, § 2, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

Another former § 34-2402, which comprised S.L. 1970, ch. 140, § 133, p. 351, was repealed by S.L. 1974, ch. 3, § 2.

34-2403. Applicability of other laws. — All election laws, including, but not limited to, bond election laws, city charters or ordinances, not inconsistent with this chapter, shall apply to all elections in election precincts where voting machines or vote tally systems are used. No provision of law, city charter or ordinance which in any way conflicts with this chapter or with the use of voting machines or vote tally systems as provided in this chapter, shall operate to prohibit use of voting machines or vote tally systems in any election or bond issue election. [I.C., § 34-2403, as added by 1974, ch. 3, § 5, p. 17.]

STATUTORY NOTES

Prior Laws. — Former § 34-2403, which comprised 1963, ch. 177, § 4, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

Another former § 34-2403, which comprised S.L. 1970, ch. 140, § 134, p. 351, was repealed by S.L. 1974, ch. 3, § 4.

34-2404. Tampering with machines prohibited. — (1) No person shall:

- (a) Tamper with or injure or attempt to injure any voting machine or vote tally system to be used or being used in an election.
- (b) Tamper with any voting machine or vote tally system that has been used in an election.
- (c) Prevent or attempt to prevent the correct operation of any voting machine or vote tally system.

(2) An unauthorized person shall not make or have in his possession a key to a voting machine to be used or being used in an election.

(3) Neither the secretary of state nor any officer or employee of any county, city, district or other political subdivision using voting machines or vote tally systems, shall solicit or accept any compensation, other than

amounts paid by the governmental unit, in connection with the sale, lease or use of voting machines or vote tally systems. [1970, ch. 140, § 135, p. 351.]

STATUTORY NOTES

Prior Laws. — Former §§ 34-2404 — 34- p. 508, were repealed by S.L. 1970, ch. 140, 2428, which comprised 1963, ch. 177, §§ 4-28, § 217.

34-2405. Authority for procurement of machines. — (1) After consultation with the county clerk as chief elections officer of his county, the governing body at any regular meeting or a special meeting called for the purpose, may rent, purchase or otherwise procure, and provide for the use of, in all or a portion of the election precincts of the county, any voting machine or vote tally system which the governing body deems to be in the best interest of that county and which machine or system is approved by the secretary of state.

(2) Thereafter the voting machine or vote tally system shall be used for voting and for receiving, registering and counting the votes in all primary and general elections held in such precincts.

(3) In all other elections, the voting machine or vote tally system may be used for voting, receiving, registering and counting the votes at the direction of the county clerk. [1970, ch. 140, § 136, p. 351; am. 1972, ch. 129, § 1, p. 257.]

STATUTORY NOTES

Prior Laws. — Former § 34-2405 was repealed. See Prior Laws, § 34-2404.

34-2406. Joint purchase and use of machines authorized. — (1) In procuring the necessary voting machines or vote tally systems to be used, a governing body of any county, city, district or other political subdivision in the county, may by agreement entered into by the board of county commissioners and the governing bodies of cities, districts or other political subdivisions, provide for the joint purchase and subsequent ownership of voting machines or vote tally systems and for the care, maintenance and use of the machines or vote tally systems.

(2) The governing body of two (2) or more counties may by agreement provide for the joint use of voting machines or vote tally systems. [1970, ch. 140, § 137, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2406 was repealed. See Prior Laws, § 34-2404.

34-2407. Purchase of machines — Manner of payment. — (1) The governing body may, on the adoption and purchase of voting machines or vote tally systems, provide for their payment in the method it determines to be for the best interest of the county, city, district or other political

subdivision. The governing body may make contracts for the purchase of the machines or vote tally systems with such provisions with regard to price, manner of purchase and time of payment that the governing body determines are proper.

(2) For the purpose of paying for voting machines or vote tally systems, the governing body may:

(a) Issue bonds, warrants, notes or other negotiable obligations. The bonds, warrants, certificates, notes or other obligations shall be a charge upon the county, city, district or other political subdivisions.

(b) Pay for the voting machines or vote tally system in cash out of the general fund.

(c) Provide for the payment for the voting machines or vote tally systems by other means.

(3) In estimating the amount of taxes for the general fund, if any, the amount required for payment for voting machines or vote tally systems shall be added, extending over the time required to pay for the machines or vote tally systems. [1970, ch. 140, § 138, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2407 was repealed. See Prior Laws, § 34-2404.

34-2408. Prior approval required for issuance of bonds. — The governing body of any county shall, prior to authorizing the issuance of bonds obtain the approval in writing of the secretary of state as to the type and number of machines or vote tally systems to be purchased and the price to be paid therefor. [1970, ch. 140, § 139, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2408 was repealed. See Prior Laws, § 34-2404.

34-2409. Examination of machines by secretary of state prior to adoption. — (1) The secretary of state shall publicly examine all makes of voting machines or vote tally systems submitted to him and determine whether the machines or vote tally systems comply with the requirements of this chapter, and can safely be used by voters at elections under the provisions of this chapter. In order for any voting machine or vote tally system to be certified in Idaho it must meet the federal election commission standards and be approved for use by an independent testing authority sanctioned by the national association of state election directors (NASSED) or be certified by the federal election assistance commission.

(2) Any person owning or interested in a voting machine or vote tally system may submit it to the secretary of state for examination. No examination shall be conducted unless documentation is provided indicating that the voting machine or vote tally system meets the federal election commission standards. For the purpose of assistance in examining the machine or vote tally system the secretary of state may employ not more

than three (3) individuals who are expert in one (1) or more of the fields of data processing, mechanical engineering and public administration. The compensation of these assistants shall be paid by the person submitting the machine or vote tally system.

(3) Within thirty (30) days after completing the examination and approval of any voting machine or vote tally system the secretary of state shall make and file in his office his report on the machine or vote tally system, together with a written or printed description and drawings and photographs clearly identifying the machine or vote tally system and the operation thereof. As soon as practicable after such filing, the secretary of state upon request shall send a copy of the report to any governing body within the state.

(4) Any voting machine or vote tally system that receives the approval of the secretary of state may be used for conducting elections in this state. Any machine or vote tally system that does not receive such approval shall not be adopted for or used at any election. After a voting machine or vote tally system has been approved by the secretary of state, any change or improvement in the machine or vote tally system that does not impair its accuracy, efficiency or capacity shall not render necessary a reexamination or reapproval of the machine or vote tally system.

(5) Any voting system, including paper ballots, that was used in the 2004 general election shall be continued to be authorized for use as long as the voting system meets the requirements of the "Help America Vote Act of 2002," Public Law 107-252.

(6) For all elections conducted after 2004, no direct recording electronic voting device shall be used unless the direct recording electronic voting device has a voter verifiable paper audit trail. Any certifications of a direct recording electronic voting device without a voter verifiable paper audit trail are hereby declared null and void.

(7) The secretary of state may periodically review the various voting systems that have been certified for use in the state to ensure such systems meet the standards set forth by the federal election assistance commission and the national institute of standards and technology. Any voting system that does not meet such standards may be decertified after a public hearing. [1970, ch. 140, § 140, p. 351; am. 2001, ch. 272, § 4, p. 993; am. 2005, ch. 282, § 1, p. 918; am. 2007, ch. 202, § 8, p. 620.]

STATUTORY NOTES

Prior Laws. — Former § 34-2409 was repealed. See Prior Laws, § 34-2404.

Amendments. — The 2007 amendment, by ch. 202, added "or be certified by the federal election assistance commission" at the end of subsection (1).

Federal References. — The federal election assistance commission (EAC) is an independent, bipartisan commission created by the Help America Vote Act of 2002 (42 U.S.C.S. § 15301 et seq.). See <http://www.eac.gov>.

Compiler's Notes. — The national association of state election directors (NASED) was formed in 1989 and can be found at <http://www.nased.org>.

The national institute of standards and technology, referred to in subsection (7), is a non-regulatory federal agency within the U.S. department of commerce. See <http://www.nist.gov>.

34-2410. Specifications for voting machines or vote tally systems.

— (1) No voting machine or vote tally system shall be approved by the secretary of state unless it is constructed so that it:

- (a) Secures to the voter secrecy in the act of voting.
- (b) Provides facilities for voting for the candidates of as many political parties or organizations as may make nominations and for or against as many measures as may be submitted.
- (c) Permits the voter to vote for any person for any office and upon any measure that he has the right to vote for.
- (d) Permits the voter, except at primary elections, to vote for all the candidates of one (1) party or in part for the candidates of one (1) party and in part for the candidates of one or more other parties.
- (e) Permits the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more.
- (f) Prevents the voter from voting for the same person more than once for the same office.
- (g) Correctly registers or records all votes cast for any and all persons and for or against any and all measures.
- (h) Can be adjusted so that the counting mechanism rejects any vote cast on the tabulating card in excess of the number which the voter is entitled to vote.
- (i) Provides that a vote for more than one (1) candidate cannot be cast by one (1) single operation of the machine or vote tally system.

(2) A vote tally system shall be:

- (a) Capable of correctly counting votes on ballots or ballot cards on which the proper number of votes have been marked for any office or question or issue that has been voted.
- (b) Capable of ignoring the votes marked for any office or question or issue where more than the allowable number of votes have been marked, but shall correctly count the properly voted portions of the ballot card.
- (c) Capable of accumulating a count of the specific number of ballots or ballot cards tallied for a precinct, accumulating total votes by a candidate for each office; and accumulating total votes for and against each question and issue of the ballots or ballot cards tallied for a precinct.
- (d) Capable of tallying votes from ballots or ballot cards of different political parties, from the same precinct, in the case of a primary election.
- (e) Capable of accommodating rotation of candidates' names on the ballot or ballot card, provided that all ballots or ballot cards from one (1) precinct shall be of the same rotation sequence.
- (f) Capable of automatically producing precinct totals in either printed, marked, or punched form, or combinations thereof. [1970, ch. 140, § 141, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2410 was repealed. See Prior Laws, § 34-2404.

34-2411. Duties of clerks of election boards. — (1) The secretary of state shall issue an administrative order outlining the duties of each of the clerks on the election board. He shall devise and prescribe for use by each local election officer the contents, form, character and kinds of ballots, ballot labels, ballot cards, formats, records, papers and documents and other materials and supplies and procedures necessary in the use of voting machines or vote tally systems and in the process of counting and tabulating the ballots by mechanical or electrical counting devices or equipment or computers.

(2) The secretary of state shall prescribe rules and regulations to achieve and maintain the maximum degree of correctness, impartiality and efficiency on the procedures of voting, and of counting, tabulating and recording votes, by the devices, machines or vote tally systems and methods provided by this act. [1970, ch. 140, § 142, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2411 was used in subsection (2), refer to S.L. 1970, repealed. See Prior Laws, § 34-2404. Chapter 170, which is codified throughout

Compiler's Notes. — The words "this act", Title 34 of the Idaho Code.

34-2412. Composition of precinct election boards. — (1) The election board of each election precinct in which a voting machine or vote tally system is used shall consist of an election judge and one (1) or more clerks. Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election. The county clerk shall establish the number of election board clerks.

(2) The qualifications and duties of election judges shall apply to the appointment of election board clerks in counties or precincts where voting machines or vote tally systems are used.

(3) The board of county commissioners or the governing body of a city, district or other political subdivision, not later than forty (40) days before an election, may create, unite, combine or divide one or more election precincts for the purpose of using one or more voting machines or vote tally systems therein at the election. The number of registered voters to be included in each of the election precincts shall be determined by such board of county commissioners or governing body of a city, district or other political subdivision. [1970, ch. 140, § 143, p. 351; am. 1974, ch. 75, § 1, p. 1162; am. 1989, ch. 346, § 1, p. 873.]

STATUTORY NOTES

Prior Laws. — Former § 34-2412 was repealed. See Prior Laws, § 34-2404.

34-2413. Preparation of machines for use — Instructions. — (1) Before each election at which voting machines or vote tally systems are to be used, the county clerk of a county, or the clerk of a city, district or other

political subdivision, in which voting machines or vote tally systems are to be used, shall cause them to be properly prepared and shall cause the election board to be properly instructed in their use.

(2) For the purpose of giving such instruction, the county clerk shall call the meeting or meetings of the election board that are necessary. Each election board shall attend the meetings and receive the instruction necessary for the proper conduct of the election with the machine or vote tally system.

(3) No election board judge or clerk shall serve in any election at which a voting machine or vote tally system is used unless he has received the required instruction and is fully qualified to perform the duties in connection with the machine or vote tally system; but this requirement shall not prevent the appointment of an election board clerk to fill a vacancy in an emergency. [1970, ch. 140, § 144, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2413 was repealed. See Prior Laws, § 34-2404.

34-2414. Printed matter and supplies. — (1) The election officer charged with the duty of providing ballots shall provide all necessary instruction, forms and supplies required for the proper use of the voting machines or vote tally systems.

(2) Within a proper and reasonable time before the first election at which voting machines or vote tally systems are to be used, the secretary of state shall prepare samples of the printed matter and supplies required. He shall furnish one (1) of each of the samples to the election officer in charge of the election of each county, city, district or other political subdivision in which the machines or vote tally systems are to be used.

(3) The county clerk or other election officer shall deliver voting machines to each election board as provided for election supplies. [1970, ch. 140, § 145, p. 351.]

STATUTORY NOTES

Cross References. — Preparation of primary ballots, § 34-713.

Secretary of state prescribes form and contents of ballots and related documents, § 34-903.

Prior Laws. — Former § 34-2414 was repealed. See Prior Laws, § 34-2404.

34-2415. Preparation of polling place for election. — (1) The election board of each election precinct in which a voting machine is to be used shall meet at the polling place for the election precinct at least thirty (30) minutes before the time set for opening the polls. Before preparing the machine for voting, the election board shall proceed as prescribed in subsection (2) of this section.

(2) The election board shall:

- (a) Cause the voting machine to be placed where it can be conveniently attended by the election board and conveniently operated by the voters and where the ballot labels on the machines can be plainly seen by the election board and the public when not being voted on.
 - (b) Cause the model to be placed where each voter can conveniently operate it and receive instructions on the model as to the manner of voting before entering the voting machine booth.
 - (c) Determine that the ballot labels are in the proper place on the machine.
- (3) After performing their duties as provided in this section, the election board shall certify to the fact in the appropriate places in the poll book. [1970, ch. 140, § 146, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2415 was repealed. See Prior Laws, § 34-2404.

34-2416. Procedure for preparing machines for an election. —

(1) In preparing a voting machine for an election, the county clerk or the clerk of the city, district or other political subdivision, as the case may be, shall:

(a) Arrange the machine and the ballot labels so that it shall in every particular case meet the requirements of voting and counting at such elections.

(b) Thoroughly inspect and test the machine, and file a certificate in his office that the ballot labels have been properly arranged.

(2) The arrangement of offices and names of candidates upon the ballot labels shall conform as nearly as practicable to the provisions of law for the arrangement of names on paper ballots, and in the event that there are more candidates for any office than can be placed upon one (1) page, the labels shall be clearly marked to indicate that the names of candidates for the office are continued on the following page.

(3) Representatives of political parties and candidates shall be permitted to examine the voting machines or vote tally systems. [1970, ch. 140, § 147, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2416 was repealed. See Prior Laws, § 34-2404.

34-2417. Notice of locations of voting machines and polling places. — Before preparing the voting machines or vote tally systems for any election, the county clerk shall mail to the chairman of the county or legislative district central committees of each political party who has notified such clerk that notice is desired, a written notice stating the time and place or places where voting machines or vote tally systems will be prepared for the election. At such times and places, one (1) representative of each political party is entitled to be present and see that the machines or

vote tally systems are properly prepared and placed in proper condition and order for use at the election. In nonpartisan elections each candidate may designate one (1) representative who has the same powers as the political party representatives. The political party and candidate representatives shall certify that they have witnessed the testing and preparation of the machines or vote tally systems. The certificates shall be filed in the office of the county clerk. [1970, ch. 140, § 148, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2417 was repealed. See Prior Laws, § 34-2404.

34-2418. Ballots and ballot labels. — (1) The ballots and ballot labels required to be furnished for general or special elections shall be printed in black ink on clear white material of such size and arrangements as to suit the construction of the machine. The ballot labels for measures may contain a condensed statement of purpose for each measure to be voted on, accompanied by the words “Yes” and “No.” The title of the offices on the ballot labels shall be printed in type as large as the space for the office will reasonably permit. Where more than one (1) candidate can be voted for an office, there shall be printed below the office title words indicating the number the voter is lawfully entitled to vote for out of the whole number of candidates, such as “Vote for Two.”

(2) The ballots and ballot labels required to be furnished for primary elections may be of different colors for the political parties who are nominating or electing candidates.

(3) The “judiciary ballot” may be added to the ballot labels for the political parties. Candidates for the above offices will be shown under the general title of nonpartisan judicial candidates.

(4) When a vote tally system is used, the county clerk shall prepare the ballots as nearly as practicable as required by law. [1970, ch. 140, § 149, p. 351; am. 1994, ch. 54, § 4, p. 93.]

STATUTORY NOTES

Cross References. — Ballots, § 34-901 et seq.

Prior Laws. — Former § 34-2418 was repealed. See Prior Laws, § 34-2404.

Effective Dates. — Section 7 of S.L. 1994, ch. 54, provided that “an emergency existing

therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

34-2419. Rotation of names of candidates. — In each primary and general election when two (2) or more persons are candidates for nomination or election to the same office, the county clerk or the clerk of a city, district or other municipality in which voting machines or vote tally systems are used shall rotate the names of candidates as directed by the secretary of state. [1970, ch. 140, § 150, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2419 was repealed. See Prior Laws, § 34-2404.

34-2420. Examinations of face of machine during election. — The election board shall occasionally examine the face of the voting machine and the ballot labels to determine that the machine and the ballot labels have not been damaged or tampered with. [1970, ch. 140, § 151, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2420 was repealed. See Prior Laws, § 34-2404.

34-2421. Procedure if a voting machine becomes inoperative. — (1) If any voting machine used in any election precinct, during or before the time the polls are opened, becomes damaged so as to render it inoperative in whole or in part, an election board clerk immediately shall notify the election officer charged with the care of the machine.

(2) If possible, the election officer so notified shall repair the machine at once or substitute another machine for the damaged machine.

(3) If no other machine can be procured for use at the election and the damaged machine cannot be repaired in time for further use at the election, or where in the discretion of a majority of the members of the election board it is impracticable to use the machine, the election board shall permit the voters to use paper ballots prepared as in cases where paper ballots are used. The paper ballots shall be furnished to the election board by the county clerk. The paper ballots shall be issued, voted and deposited in ballot boxes in as nearly the same manner as provided by law, except that the paper ballots shall not be tallied and returned by the election board. Instead, these paper ballots shall be delivered to the county clerk for his tally and canvass. [1970, ch. 140, § 152, p. 351; am. 1971, ch. 5, § 7, p. 11.]

STATUTORY NOTES

Prior Laws. — Former § 34-2421 was repealed. See Prior Laws, § 34-2404.

34-2422. Closing of polls — Delivery of ballots to clerk before polls closed. — (1) At the hour for closing the polls, the election board shall declare the polls of the election closed and shall not permit any further voting. However, electors who are, at the hour of closing, within the polling room or awaiting their turn to vote shall be considered as having begun the act of voting and shall be permitted to cast their votes.

(2) At any time prior to the closing of the polls provision may be made for the delivery of voted ballots to the county clerk or the clerk of a city, district or other political subdivision for counting. If such procedure is adopted, the result of this early count shall not be released to the public until after 8:00 p.m. of election day. [I.C., § 34-2422 as added by 1971, ch. 5, § 8, p. 11.]

STATUTORY NOTES

Prior Laws. — Former § 34-2422 was repealed. See Prior Laws, § 34-2404.

34-2423. Absent voting by voting machine or paper ballot. — The county clerk may provide that absent voting shall be either by voting machine or by marking a paper ballot or a combination of both. In any of the foregoing cases he may establish one (1) absent elector unit to handle and process absent elector ballots for each legislative district within his county and shall cause sufficient ballots of the proper kind or kinds to be provided.

Voted ballots shall be retained by the county clerk until election day when they shall be transferred to the ballot processing center and thereafter made a part of the election returns. [1970, ch. 140, § 154, p. 351; am. 1976, ch. 73, § 2, p. 242.]

STATUTORY NOTES

Cross References. — Absentee voting, § 34-1001 et seq.

Prior Laws. — Former § 34-2423 was repealed. See Prior Laws, § 34-2404.

34-2424. Paper ballots used in conjunction with voting machines. — In any election where voting machines or vote tally systems are used:

(1) Paper ballots may be used to record the electors' votes for party offices.

(2) Paper ballots may be used to record the electors' votes for or against municipal candidates or measures.

(3) Paper ballots which are used in conjunction with voting machines may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct.

(4) Ballots or ballot cards may be returned to the office of the county clerk for counting.

(5) In the event that paper ballots are used in conjunction with voting machines or vote tally systems to record write-in votes, these paper ballots may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct. [1970, ch. 140, § 155, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2424 was repealed. See Prior Laws, § 34-2404.

34-2425. Preparation and distribution of sample ballots. — (1) At each primary, general and special election there shall be provided as many sample ballots as the county clerk considers necessary. The sample ballots shall be prepared and distributed as provided by law.

(2) For each primary, general and special election the county clerk shall cause to be published a facsimile, except as to size, of the sample ballot required in subsection (1) of this section. [1970, ch. 140, § 156, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2425 was repealed. See Prior Laws, § 34-2404.

34-2426. Exhibition of voting machines for instruction of voters.

— (1) Before each election at which voting machines are to be used the county clerk shall place on public exhibition a suitable number of machines for the proper instruction of voters. The machines shall be arranged and equipped with ballot labels so as to best illustrate the method of voting at that election and so far as practicable, shall contain:

(a) The names of the offices to be filled.

(b) The names of the candidates to be voted for, together with their proper party designations in case of party elections.

(c) Statements of the measure to be voted on.

(2) In addition to supplying sample ballots, the county clerk shall, before the election, take reasonable additional steps to familiarize the voters with a diagram showing the face of the voting machine after the official ballot labels are arranged thereon with illustrated instructions how to vote, and with the locations of the voting machines that are on public exhibition.

(3) Before each election at which a vote tally system is to be used, the county clerk shall make every reasonable effort to acquaint the electors within his county with the ballot format and the marking system. [1970, ch. 140, § 157, p. 351.]

STATUTORY NOTES

Prior Laws. — Former § 34-2426 was repealed. See Prior Laws, § 34-2404.

34-2427. Physically disabled voters. — (1) The election board clerks shall instruct electors on how to record their votes on the voting machine or vote tally system, and shall give assistance to any elector who declares that he is unable by reason of physical disability or other handicap to record his vote on the machine or vote tally system, and on request by the elector after he has entered the voting booth, shall give him the necessary information to enable him to record his vote.

(2) Any elector who, because of blindness, physical disability or other handicap, is unable to mark his ballot shall, upon request, receive the assistance of the election board clerks or some other person chosen by the elector in the marking thereof. Such clerks or person shall ascertain the wishes of the elector and mark his ballot in accordance therewith, and shall thereafter give no information regarding such marking. The election board judge may require a declaration of disability to be made by the elector under oath. Whenever an elector receives assistance in this manner, a clerk shall

make a notation thereof in the combination election record and poll book following the name of the elector.

(3) If any elector, after entering the voting booth, asks for information regarding the operation of the voting machine or marking device, the election board clerks shall give him the necessary information. [1970, ch. 140, § 158, p. 351; am. 1972, ch. 129, § 2, p. 257.]

STATUTORY NOTES

Cross References. — Denial of use of facilities by person accompanied by guide dog for the blind prohibited, § 18-5812B.

Physically disabled voters, § 34-1108.

Prior Laws. — Former § 34-2427 was

repealed. See Prior Laws, § 34-2404.

Effective Dates. — Section 5 of S.L. 1972, ch. 129 declared an emergency. Approved March 13, 1972.

34-2428. Time allowed each voter to vote. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 34-2428 was repealed. See Prior Laws, § 34-2404.

Compiler's Notes. — This section, which

comprised 1970, ch. 140, § 159, p. 351, was repealed by S.L. 2001, ch. 272, § 5.

34-2429. Validation of elections. — All elections, including but not limited to bond issue elections, heretofore conducted pursuant to this chapter and all proceedings had or to be had in the authorization and issuance of the bonds authorized thereat, together with all such bonds when issued, are hereby validated, ratified and confirmed, and all such bonds when issued are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which are being contested at the time this act takes effect [February 8, 1974]. [I.C., § 34-2429, as added by 1974, ch. 3, § 6, p. 17.]

STATUTORY NOTES

Prior Laws. — A former § 34-2429, which comprised 1963, ch. 177, § 29, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

Another former § 34-2429, which comprised S.L. 1970, ch. 140, § 160, p. 351, was repealed by S.L. 1972, ch. 129, § 3.

Compiler's Notes. — The bracketed date in the second sentence was inserted by the compiler.

Effective Dates. — Section 7 of S.L. 1974, ch. 3 declared an emergency. Approved February 8, 1974.

34-2430. Rental agreements. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 34-2430, which comprised 1963, ch. 177, § 30, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

Compiler's Notes. — Former § 34-2430, which comprised S.L. 1970, ch. 140, § 161, p. 351, was repealed by S.L. 1972, ch. 129, § 4.

34-2431 — 34-2446. Voting machines — Manner of voting — Count of votes — Recanvass — Recount — Applicable laws. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 508, were repealed by S.L. 1970, ch. 140, which comprised 1963, ch. 177, §§ 31—46, p. § 217.

CHAPTER 25

ELECTION CAMPAIGN FUND

SECTION.

34-2501. Definitions.

34-2502. Election campaign fund — Creation.

34-2503. Election campaign fund — Distribution.

SECTION.

34-2504. Statement of expenditures filed before election day.

34-2505. Statement of expenditures — Rules — Unqualified expenditures — Unexpended balance.

34-2501. Definitions. — As used in this act, the following terms have the following meanings:

(a) "Board" means the state board of examiners provided in section 67-2001, Idaho Code.

(b) "Committee" means the state central committee as provided in section 34-504, Idaho Code.

(c) "Election campaign fund" or "fund" means the fund created by section 34-2502.

(d) "Political party" means an affiliation of electors representing a political group under a given name as authorized by section 34-501, Idaho Code:

(1) "major political party" means a political party which at the last general election polled for any one of its candidates for state or national elective office more than ten per cent (10%) of the vote cast for the office.

(2) "minor political party" means a political party which at the last general election polled for any one of its candidates for state or national elective office more than three per cent (3%) but less than ten per cent (10%) of the vote cast for the office.

(3) "new political party" means an affiliation of electors who shall file with the secretary of state a petition that they desire recognition as a political party, which said petition shall meet the requirements as otherwise prescribed by law in section 34-501, Idaho Code.

(e) "General election" means the national, state and county election held on the first Tuesday succeeding the first Monday of November of each even numbered year.

(f) "Qualified election expense" means an expense:

(1) incurred by the state central committee in furthering the election of a candidate for office or attempting to influence any election;

(2) incurred within the expenditure report period as defined in this act, or incurred before the beginning of such period to the extent such expense is for property, service, or facilities used during such period;

(3) neither the incurring nor payment of which constitutes a violation of any of the laws of the United States or of the state of Idaho.

(g) "Expenditure report period" means from the day following the primary election (the Tuesday succeeding the first Monday of August in each even numbered year) to the thirtieth day following the general election. [1975, ch. 132, § 1, p. 290; am. 1978, ch. 40, § 1, p. 69.]

STATUTORY NOTES

Cross References. — Campaign contributions and expenditures, law regulating, § 67-6601 et seq.

Impersonation of officer, deputy or employee of state tax commission, felony, § 18-6309.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1975, Chapter 132, which is compiled as §§ 34-2501 — 34-2503, 34-2505 and 63-3088.

34-2502. Election campaign fund — Creation. — There is hereby created and established in the treasury of the state of Idaho a fund to be known and designated as the "election campaign fund." The state controller shall maintain within the fund a separate account for each party for which a specific designation is made under the provisions of section 63-3088, Idaho Code, and shall keep a general account for moneys for which no specific designation is made and which are to be distributed as provided in section 34-2503, Idaho Code.

All moneys placed in the election campaign fund are hereby perpetually appropriated to the board of examiners for administration and allocation as provided by this act. All expenditures from the fund shall be paid out in warrants drawn by the state controller upon presentation of proper vouchers from the secretary of state. The provisions of section 67-3516(3) and (4), Idaho Code, are hereby specifically declared not to apply to the administration of the election campaign fund. [1975, ch. 132, § 2, p. 290; am. 1976, ch. 260, § 1, p. 880; am. 1994, ch. 180, § 54, p. 93.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 34-2501.

Effective Dates. — Section 2 of S.L. 1976, ch. 260 declared an emergency. Approved March 31, 1976.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if

the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller." Since such amendment was adopted, the amendment to this section by § 54 of S.L. 1994, ch. 180 became effective January 2, 1995.

34-2503. Election campaign fund — Distribution. — Each political party, through its central committee, shall be eligible for payments from the fund in the following manner:

(a) Each party shall receive the amount of the fund which has been designated by the contributing individuals and credited to the separate account in the fund maintained for the party.

(b) Ninety percent (90%) of the fund which has not been designated, but is credited to the general election campaign fund, shall be distributed to the central committees in proportion to the share of the votes cast for the candidate of the party for the office of governor in the last election for

governor, provided that no party shall receive more than fifty percent (50%) of the fund so distributed. Any portion of the fund not distributed shall revert to the fund and, together with the ten percent (10%) reserved, be distributed in equal portions to all major, minor and new political parties which have qualified candidates for elective state office for the ballot in the next general election.

(c) The distribution provided by this section shall take place on the Tuesday succeeding the first Monday of August in each year. [1975, ch. 132, § 4, p. 290; am. 2008, ch. 62, § 1, p. 154.]

STATUTORY NOTES

Amendments. — The 2008 amendment, by ch. 62, deleted “even-numbered” preceding “year” in subsection (c).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes governing “minor political parties”. 120 A.L.R.5th 1.

34-2504. Statement of expenditures filed before election day. — All funds distributed to the political parties in section 34-2503, Idaho Code, shall be deposited into the political party’s account established under chapter 66, title 67, Idaho Code, and all such funds shall be reported on the disclosure reports required in that chapter. [I.C., § 34-2504, as added by 1994, ch. 54, § 2, p. 93.]

STATUTORY NOTES

Prior Laws. — Former § 34-2504, which comprised 1975, ch. 132, § 5, p. 290; am. 1982, ch. 137, § 6, p. 388, was repealed by S.L. 1994, ch. 54, § 1, effective July 1, 1994.

Effective Dates. — Section 7 of S.L. 1994, ch. 54, provided that “an emergency existing

therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

34-2505. Statement of expenditures — Rules — Unqualified expenditures — Unexpended balance. — The board is authorized to prescribe such rules, to conduct such examinations and audits, to conduct such investigations, and to require the keeping and submission of such books, records and information as it deems necessary to carry out the functions and duties imposed by this act.

If the board finds that any of the expenditures reported by the committee are not qualified election expenses, it shall so notify the committee of the amount deemed to have been not qualified. The committee shall be entitled to hearing by the board; if after the hearing by the board, the expenditures are determined not to be qualified, such committee shall pay to the state controller an amount equal to such amount to be credited to the public school fund. [1975, ch. 132, § 6, p. 290; am. 1994, ch. 54, § 3, p. 93; am. 1994, ch. 180, § 55, p. 96.]

STATUTORY NOTES

Amendments. — This section was amended by two 1994 acts — ch. 54, § 3, effective July 1, 1994 and ch. 180, § 55, contingently effective January 2, 1995 — which do not appear to conflict and have been compiled together.

The 1994 amendment, by ch. 54, § 3, in the section heading, deleted “filed after general election” following “statement of expenditures”; deleted the introductory paragraph and subdivisions (1) and (2) which read “Not later than the thirtieth day following a general election, the chairman of the committee shall be responsible to file with the office of the board a statement setting forth: (1) the amount of money received by the committee under the provisions of section 34-2503, and (2) the qualified election expenses (shown in such detail as the board may prescribe) incurred by the committee”; and deleted the former last paragraph which read, “If the report filed under this section shows an unexpended balance of the funds provided under the terms of section 34-2503, the committee shall file monthly reports on the purposes to which such funds are used until there is no balance.”

The 1994 amendment, by ch. 180, § 55, in the section heading, deleted “and regulations” following “rules”; in subdivision (1) and the last paragraph, inserted “Idaho Code” following “34-2503”; in the second paragraph, deleted “and regulations” following “rules”; and

in the next to last paragraph, substituted “state controller” for “state auditor”. Since subdivision (1) and the last paragraph, which would have contained the added words “Idaho Code,” were deleted by ch. 54, § 3, the words “Idaho Code” have not been compiled above.

Compiler’s Notes. — For words “this act” see Compiler’s Notes, § 34-2501.

Section 7 of S.L. 1975, ch. 132, read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates. — Section 7 of S.L. 1994, ch. 54, provided that “an emergency existing therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment to this section by § 55 of S.L. 1994, ch. 180 became effective January 2, 1995.

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